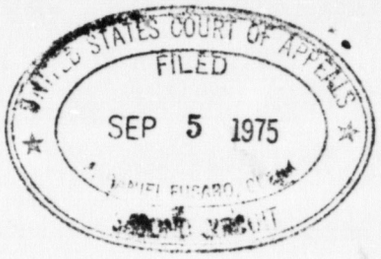
United States Court of Appeals

for the Second Circuit

APPENDIX



75-7326

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRUUIT

B

STANLEY V. TUCKER,

Plaintiff-Appellant

-v-

No 75-7326

THOMAS E. MESKILL, et al

Defendant-Appellees

P/S

APPELLANT'S APPENDIX

Appeal from Final Judgment Entered on
Motions To Dismiss on July 23, 1975

HONORABLE T. EMMET CLARIE

TRIAL JUDGE

STANLEY V. TUCKER
APPELLANT/PLAINTIFF
Box 35
Hartford, Conn 06101

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FIRST CAUSE OF ACTION:

1. This is an action for declaratory and injunctive relief and damages authorized by 42 USC 1983 and 1985.

2. Jurisdiction is conferred on this Court by Title 28 USC 1331, 1332 and 1343 (1), (2), (3), and (4), and by Title 28 USC 1655 and by Title 28 USC 2201 and 2202 and by Title 28 USC 2281 and 2284, and by Boddie v Conn, 401 US 371 .

3. The Plaintiff is a resident and citizen of the State of Connecticut and Defendants, THOMAS E. MESKILL, STANLEY H. PAIGE, and HOWARD A. NEWMAN, and JOHN P. COTTER are residents and citizens of the State of Connecticut and Defendants PAUL B. CRIKELAIR, ROBERT R. ANDERSON and MARGIE J. THRELKELD and JEAN NEAL are residents and citizens of the State of California.

4. The matter in contpoversy exceeds $10,000.00 exclusive of interest or costs and arises under the Constitution and laws of the United States andmore particuliarly under the First, the Fifth and Fourteenth Amendments to the United States

Constitution, which said Amendments guarantee the right to due process and to equal protection of the laws and to liberty in one's person and / or property.

5. This action seeks a declaratory judgment that Connecticut General Statute 49-44 is unconstitutional and void by reason that said statute denies due process and denies equal protection of the laws because said statute permits:

a. Levying of pretended judgment liens without notice or hearing

b. Levying of pretended judgment liens for months or years without any notice being ever required to be given before or after the pretended judgment liens are recorded.

c. Levying of pretended judgment liens without any means or method of prompt and speedy release if said judgment liens are false, or invalid or disputed

d. Levying of pretended judgment liens upon property of purported debtor without limit as to the amount of property that can be liened.

e. No means or method of prompt and speedy release of lien if the liens are excessive, or are not needed for security or are malicious or filed with improper motives

f. No balancing of interests of creditor against debtor as to hardship on debtor and to avoid undue damages or needless losses to debtor resulting from false, or invalid or excessive liens.

6. This action requires the speedy conviening of a three-judge District Court pursuant to Title 28 USC 2281 and 2284 to rule upon the constitutional challenge to Conn G. S. 49-44.

7. This action seeks injunctive relief, both temporary and permanent pursuant to Title 42 USC 1983 and 1985 and Title

in properly preparing and properly executing and promptly recording releases of each of the judgment liens complained of herein: further injunctive relief both temporary and permanent is sought restraining the defendants from recording future judgment liens upon property of Plaintiff without notice or hearing.

8. Defendant, PAUL B. CRIKELAIR, has caused to be recorded upon seven pieces of property in Hartford Connecticut with ownership interest by Plaintiff judgment liens on or about August 21, 1974 under following conditions:

a. Plaintiff disputes finality and validity of the said liens and the judgments upon which the lines are based

b. Said liens are grossly excessive as one lien alone provides sufficient security for the alleged debt

c. Said liens were filed maliciciously with bad motive to cause harm and harassment.

d. Said liens were filed without notice or hearing and Plaintiff only discovered of their existance by accidental reading in THE COMMERCIAL RECORD.

9. Defendants, ROBERT R. ANDERSON and MARGIE J. THRELEKLD, have caused to be recorded upon seven pieces of property in Hartford, Connecticut with ownership interest by Plaintiff and upon three pieces of peoperty in Bristol, Connectict with ownership interest by Plaintiff and upon two pieces of property in Torrington, Connecticut with ownership interest by Plaintiff judgment liens on or about August 12th, 1974 under identical conditions as set forth above in Paragraph 8 (a) through (d).

10. Defendants, THOMAS E. MESKILL, STANLEY H. PAIGE, and HOWARD A. NEWMAN, are STATE OFFICERS who have sworn an oath to uphold the federal constitution and the amendments thereto and whose primary duty is to administer the laws of Connecticut and to formulate or adopt or present for adoption general statutes that conform to the UNITED STATES CONSTITUTION and the AMENDMENTS thereto and to the decisions of the federal courts interpreting said constitution and amendments; that said state officers have wantonly and willfully and maliciously and negligently permitted the existance and continuance of state statute G. S. 49-44 that denies due process and equal protection of the laws as defined by recent decisions of the UNITED STATES SUPREME COURT and by decisions of lower federal courts and as a direct and proximate result Plaintiff has suffered the damages complained of hereinbelow.

11. The procedure whereby the Defendant secured their judgment liens was to present to the Town Clerks of Hartford, Bristol and Torrington signed Judgment Liens and thereupon the Town Clerks recorded said Judgment Liens in their records pursuant to G. S. 49-44 and said liens were effective from the minute recorded; this is a proper case for determination by a three-judge court pursuant to 28 USC 2281 and 2285 because it seeks a permanent injunction to restrain defendants who are state officers or local officers performing a state function embodying policys of state wide concern from applying, enforcing, executing and implimenting Conn G. S. 49-44 which statute denies due process and equal protection of the laws and that acts to confiscate

private property without compensation and that illegally and unconstitutionally interfers wit h the right of American citizens to enjoy their property rights freely without denials of due process or equal protection of the laws.

12. Defendant, JOHN P. COTTER, is a STATE OFFICER Who has sworn an oath to uphold the federal constitution and the amendments thereto and whose primary duty under Conn. G. S. 51-2 is ....."the proper conduct of the business of said courts" and said Defendant, JOHN P. COTTER, has wantonly and willfully and maliciously and negligently permitted the existance and continuance of state statute G. S. 49-44 that denies due process and equal protection of the laws as defined by recent decisions of the UNITED STATES SUPREME COURT and by decisions of lower federal courts and as a direct and proximate result Plaintiff has suffered the damages complained of hereinbelow. In Boddie v Connecticut, 401 US 371, DEFENDANT, JOHN P. COTTER, refused due process and equal protection rights to welfare recipients in Connecticut until after the decision of the UNITED STATES SUPREME COURT when on June 7th, 1971 Section 28A of the Connecticut Practice Book was adopted conforming Connecticut practice to the federal decision.

13. Plaintiff has suffered and will continue to suffer damages by clouds over titles to his properties by said judgment lines; some but not all of the damages are set forth as follows:

a. Plaintiff cannot refinance when interest rates are low and will suffer increased costs by being forced to refinance when rates are high.

b. Plaintiff cannot sell or trade his properties when market conditions are good and will suffer losses by being forced to wait until market conditions are bad.

c. Plaintiff during 1974 applied to about six lending institutions for loans and was denied loans due to clouds created by said judgment liens.

d. A foreclosure action was instituted during August 1974 on a $180,000 mortgage said foreclosure "triggered" by said liens

e. On October 19th, 1974 Plaintiff attended a foreclosure sale of two lots he had ownership interest in, lots 50 and 51, in Bristol, Connecticut and although Plaintiff bid on said lots the sale was to stranger as Plaintiff lacked funds to bid; due to liens by Defendants plaintiff cannot reinvest his funds.

f. Plaintiff suffered damages to his business and credit reputation by widespread publicity given said lines in the COMMERCIAL RECORD. -A 6-

g. Plaintiff suffered damages and will suffer damages to his business and credit reputation by reason of the continuing existance of said judgment liens available to public inspection in the records of the town clerks of Hartford, Bristol, and Torrington.

h. The continuing existance of said liens have caused and will cause further liens or attachments or law suits against this Plaintiff which must be defended at great cost to Plaintiff.

14. DEFENDANTS, THOMAS E. MESKILL, STANLEY H. PAIGE, and HOWARD A NEWMAN, refused due process and equal protection to citizens of Connecticut long after the decision of the UNITED STATES SUPREME COURT in SNIADACH v FAMILY FINANCE CORP, 395 537 on June 9th, 1969 and only after follow-on decisions in LYNCH v HOUSEHOLD FINANCE, 405 US 538, and TUCKER v MAHER, 405 US 1052 did said DEFENDANTS act to adopt Connecticut Public Act 73-431 purporting to conform pre-judgment remedies to said federal decisions.

15. DEFENDANTS, JEAN NEAL and ROBERT R. ANDERSON, acting in concert and conspiracy caused to be recorded upon approx. fifteen pieces of property in Hartford, Bristol, and Torrington, Connecticut with ownership interests by Plaintiff judgment liens starting about August 1972 and completing about March 1973 under identical conditions as set forth above in Paragraph 8 (a) through (d).

WHEREFORE PLAINTIFF prays judgment against Defendants and each of them as follows:

1. A judgment by a three-judge district court speedily convienced that General Statute 49-44 is unconstitutional and void and that said judgment liens complained of void.
2. Temporary, preliminary and permanent injunctions restraining Defendants from and delay in premptly and properly preparing and recording releases of the judgment liens complained of and from recording any future judgment liens pursuant to G. S. 49-44 on property of Plaintiff.
3. Damages of One Million Dollars
4. Costs of suit and such further relief as may to this court appear appropriate.

By_____
STANLEY V. TUCKER

VERIFICATION

STATE OF CONNECTICUT)
) ss
COUNTY OF HARTFORD)

I, STANLEY V. TUCKER, being duly sworn, depose and say as follows:

That I have read and understand the first and second causes of action and that the allegations thereof are true and correct to the best of my information and belief.

Sworn to and subscribed to
before me DEBORA K. ADAMS

Notary Public.

My commission expires 3-31-78

By_____
STANLEY V. TUCKER
11-5-74

SECOND CAUSE OF ACTION : ABUSE OF PROCESS

STANLEY V. TUCKER

-v-

PAUL B. CRIKELAIR, MARJIE J. THREIKELD,
and ROBERT R. ANDERSON.

****

1. Plaintiff repeats and realleges from his First Cause of Action Paragraphs (1), (2), (3), (4), (8), (9), (13) and (15) the same as if set forth herein verbatim.

2. Said judgment liens complained of herein were made with improper motives maliciously for purposes of vexing and oppressing Plaintiff by causing financial hardships and indeed for purposes of causing financial ruin of Plaintiff and in the very words used by Defendant, Robert R. Anderson, writing on behalf of himself and the other defendants the judgment liens were intended to.....

"create a holocaust of foreclosures.....
to bring about the total financial ruin of Plaintiff."

3. That Defendants in recording said judgment liens performed an improper act namely the excessive liens upon a multiplicity of properties impounding from ten to twenty times the alleged debt and impounding a total of thirteen properties whereas a single lien upon one property alone would be sufficient to provide security for the alleged debt.

WHEREFORE PLAINTIFF prays judgment against Defendants and each of them as follows:

1. Damages of One Million Dollars
2. Speedy Discharge and release of all liens as excessive except one lien for each defendant pending adjudication of invalidity of all liens.
3. Costs of suit and such added relief as to this coourt may seem appropriate.

By _____
STANLEY V. TUCKER

STANLEY V. TUCKER,
Plaintiff

vs.

THOMAS E. MESKILL, INDIVIDUALLY and in his capacity as GOVERNOR OF THE STATE OF CONNECTICUT, et al,
Defendants

CIVIL ACTION
NO. H-74-358

NOVEMBER 26, 1974

ANSWER PRESENTING DEFENSES UNDER RULE 12(b) WITH OTHER DEFENSES CONSOLIDATED PURSUANT TO RULE 12(g), FEDERAL RULES OF CIVIL PROCEDURE

FIRST DEFENSE

1. The Complaint fails to state a claim against the Defendant upon which relief can be granted.

2. The allegations in the Complaint are insufficient in law and in fact to show the jurisdiction of this Court.

SECOND DEFENSE

1. Paragraphs 1, 2, 4, 5, 6, 7, 10, 11, 12, 13, 14, and 15 of the "First Cause of Action" and paragraphs 1, 2, and 3 of the "Second Cause of Action: Abuse of Process" of the

2. As to Paragraphs 3, 8, and 9 of the "First Cause of Action," the Defendant has no knowledge or information sufficient to form a belief and leaves the Plaintiff to his proof.

DEFENDANTS
THOMAS E. MESKILL AND
JOHN P. COTTER

By: ROBERT K. KILLIAN
ATTORNEY GENERAL

Barney Lapp

Barney Lapp
Assistant Attorney General

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER,	:	
-v-	:	CIVIL ACTION H 74-358
THOMAS E. MESKILL, ET AL	:	DECEMBER 14, 1974

APPLICATION FOR CONVEINING OF THREE-JUDGE DISTRICT COURT

NOTICE IS HEREBY GIVEN that the Plaintiff will bring to hearing on January 6th, 1974 at 10 am or as soon thereafter as matter may be heard in the North Courtroom of the above entitled court his Application For Conveining of a Three-Judge District Court pursuant to Title 28 USC 2281 and 2284. This Motion will be based on the complaint and the supporting Brief, copy served herewith.

By_____

STANLEY V. TUCKER
Box 35
Hartford, Conn 06101

BRIEF IN SUPPORT OF APPLICATION FOR THREE-JUDGE DISTRICT COURT

I. STATEMENT OF FACTS:

A. Factual Background: Plaintiff, Stanley V. Tucker, is now and has been for approximately ten years been self employed in the construction, and operation of real estate in Connecticut, said employment being the only source of income for Plaintiff. In the normal course of events Plaintiff would secure a construction mortgage and then in the normal course of business as construction proceeded would receive mortgage money disbursements to pay for labor and materials. Periodically to expand, to dispose of debts, to consolidate it would be necessary to make loans which would be secured by first or second mortgages on real estate. It is the practice of lenders in Connecticut and elsewhere to require a clear title and title is routinely searched prior to making either construction advances or first or second loans. Any lien and especially a "judgment Lien" would pose an insurmountable hurdle to obtaining any releases or financing.

B. "FEDERAL LIENS" RECORDED PURSUANT TO CONN. G. S. 49-44.

The California Defendants in this action, Robert R. Anderson, Paul B. Crikelair, Jean Neal, and Margie J. Threlkeld, operating from California have recorded a multiplicity of liens upon every parcel of property in Connecticut with ownership interests by Plaintiff. Their claims come from judgments rendered years ago in the California trial courts, some defaults, some by trial, but all claimed invalid by Plaintiff.

The multipicity of liens are not needed by Defendants for any legitimate purpose, such as security for claimed debt but instead Defendants show their malicious purposes and dark motives by impounding with liens up to 15 times the claimed debt and writing with Edgar Allen Poe type of madness on behalf of all defendants Robert R. Anderson indicated the purpose of the liens was ...." to bring about a halocaust of foreclosures.... the total financial ruin of Plaintiff."

It is not claimed that this dark and sinister purpose was in the minds of the Connecticut Legislators who adopted Conn. G. S. 49-44 yet without the slightest dispute it is Conn G. S. 49-44 that provides the color of state law that enables the California defendants to maliciously file liens without any limits as to amount, purpose, hardship, justification, nor any of the many Constitutional considerations protected by decisions of the UNITED STATES SUPREME COURT.

Indeed when challenged by mail as to the hardships and injustice flowing from their liens the California defendants response is that they are merely doing what the Connecticut General Stature provides for.

C. THE LIENS COME FROM "REGISTRATION" OF FOREIGN JUDGMENTS

Conn G. S. 49-44 reads clearly enough as to the right to record a judgment lien on a judgment "rendered in a court of this State or of the United States within this state".

But the liens do not fit precisely into the statutory definition but instead come from state of California judgments that were claimed invalid by Plaintiff and then sued upon by California defendants not in the federal courts of Conn. but under conditions of lack of personal jurisdiction were sued on in California federal courts and then the judgments "registered" in the federal courthouse in New Haven pursuant to Title 28 USC 1962.

Thus while not fiting into the statutory definition still the statute, G. S. 49-44 containing no prohibitions, the foreign Judgments were "registered" and then recorded as liens under G. S. 49-44.

D. INVALIDITY OF CALIFORNIA STATE JUDGMENTS: Plaintiff claims the California judgments invalid for many reasons such as denial of due process, failure to conduct jury trial when jury timely claimed and fees paid, trial judge disqualified under mandatory disqualification statute, CCP 170.6., etc..

E. LACK OF JURISDICTION FOR CALIFORNIA FEDERAL COURTS

Fundamentally Plaintiff contends that the California federal courts lacked personal jurisdiction and under newly enacted long arm statute, CCP 410.10 and 415.40, due to limitations set forth in International Shoe v Washington, 326 US 310. and follow on decisions in the United States Circuit Courts of Appeal. The International Shoe, supra, decision in December 1945 spawned a flood of adoptions of "long arm" statutes until approx 41 states have such a statute today in some form. Both California and Connecticut adopted their present statutes in 1970. Of all the states only California has a "long arm"statute without any definitions or standards. While since 1945 about 41 states adopted long arm statutes as yet the U. S. Supreme Court has not reviewed the constitutionality of any of the state statutes. Only by decision of the California state supreme court was its former corporations long arm statute declared unconstitutional for vagueness.

II. APPLICABLE STATUTES

CONN G. S. 49-44:

§ 49-44. Recording of judgment lien. When it holds from attachment

Any suitor having an unsatisfied judgment, obtained in any court of this state or of the United States within this state, may cause to be recorded, in the town clerk's office in the town where the land lies, a certificate signed by the judgment creditor, his attorney or personal representative, substantially in the form following:

This is to certify that A. B., of ....., ... on the ..... day of ....., 19...., in the ..... court holden at ....., in the county of ....., (or in the United States ..... court) did obtain a judgment in his favor, against C. D., of ....., ... for the sum of ..... dollars damages, and ..... dollars costs of suit, which judgment remains wholly unsatisfied (or, on which judgment the sum of ..... dollars is still due); and to secure said sums, and the lawful interest thereon, a judgment lien in favor of said A. B. is hereby placed upon the following-described real estate of the said C. D., situate in the town of ....., county of ....., to wit: (description); pursuant to the statute in such case made and provided. Dated at ..... this ..... day of ....., 19.....

A. B.

Such judgment, from the time of filing such certificate, shall constitute a lien upon the real estate described in such certificate; and, if such lien is placed upon real estate attached in the suit upon which such judgment was predicated and within four months after such judgment was rendered, it shall hold from the date of such attachment, if such judgment lien contains a clause referring to and identifying such attachment, substantially in the form following: This lien is filed within four months after such judgment was rendered and the same real estate herein described was attached in said action on the ..... day of ..... 19.... (1949 Rev., 7225.)

TITLE 28 USC 1963:

§ 1963. Registration in other districts

A judgment in an action for the recovery of money or property now or hereafter entered in any district court which has become final by appeal or expiration of time for appeal may be registered in any other district by filing therein a certified copy of such judgment. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien. June 25, 1948, c. 646, 62 Stat. 958; Aug. 23, 1954, c. 837, 68 Stat. 772; July 7, 1958, Pub.L. 85-508, § 12(*o*), 72 Stat. 349.

RULE 69 - FEDERAL RULES OF CIVIL PROCEDURE :

RULE 69

EXECUTION

a. IN GENERAL. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions or in the manner provided by the practice of the state in which the district court is held.

III. ARGUMENT

III. A. FILING OF AN APPLICATION FOR THREE-JUDGE COURT LIMITS JURISDICTION OF DISTRICT COURT TO NOTIFICATION TO CHIEF JUDGE OF THE CIRCUIT COURT OF APPEALS

Title 28 USC 2284 sets out statutory procedure that must be followed when a petition or application is file for a three-judge district court. The District Court must immediately notifiy the Chief Judge of the Circuit so that an assignment of judges to the panel can be made. 28 USC 2284 (1). All pending matters by law must be heard by the Three-judge panel.

> "A three-judge court has jurisdiction to deciede a complaint..... and single-judge district court had no jurisdiction....."
>
> Idlewild Bon Voyage Liquor Corp v Rohan
> 289 F 2d 426

A recent action, Goosby v Osser, 409 U S 512, 1973, involved the reversal of a District Court decision, upheld by the Court of Appeals, on grounds that the single judge was without poeer to deciede the constitutional issue (although the Pennsylvania state defendants conceded unconstitutionality) but held that under the statute only a THREE-JUDGE DISTRICT COURT had jurisdictional power. Goosby, supra, is of great importance because the UNITED STATES SUPREME COURT clarifies

the standards to be followed in determining the threshold question of "substantiality " of the federal issue on page 518:

> "Constitutional insubstantiality" for this purpose has been equated with such concepts as "essentially fictitious" Baily v Patterson 369 U. S. at 33; "wholly insubstantial, ibid; "obviously frivolous" Hannis Distilling Co v Baltimore 216 U S 285 (1910); and "obviously without merit"Ex Parte Poresky 290 US 30. The limiting words "wholly" and obviously" have cogent legal significance. In the context of the effect of prior decisions upon the substantiality of constitutional claims, those words import that claims are constitutionally insubstantial only if the prior decisions that merely render clsims of doubtful or questionable merit do not render them insubstantial for the purpose of 28 USC 2281. A claim is insubstantial only if "its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy." Ex Part Poresky, supra, p 32.

III B. PLAINTIFF's CLAIMS ARE SUBSTANTIAL IN LIGHT OF GRIFFIN v GRIFFIN 327 U S 220, Feb 25, 1946 AND OTHER CASES

The jurisdictional basis for a challenge to unconstitutional attachments or liens under the civil rights statutes, 42 USC 1983, is believed without question in light of recent decisions, Lynch v Houshold Finance, 405 US 538 and its follow-on Tucker v Maher, 405 US 1052. Both cases challenged on constitutional grounds Connecticut General Statutes. Both actions dismissed. The Lynch dismissal being from a Three-Judge Court went straight to the U.S. Supreme Court. The Tucker action dismissed by a single judge went to the Second Circuit Court of Appeals where the dismissal was upheld. Both actions were reversed and remanded by the UNITED STATES SUPREME COURT in an expansion or clarification of the power of the civil rights acts to include "property" as well as "personal" rights.

This plaintiff's claim does not rest alone on the due process clause and the right to notice and hearing as affirmed in a flood of cases across the United States both in federal and state forums. See:

Snaidach v Family Finance	395 U. S. 337
Lynch v Household Finance	405 U. S. 538
Tucker v Maher	405 U. S. 2052
Fuentes v Shevlin	407 U. S. 67

This plaintiff's cases rests squarely on the denial of equal protection in G. S. 49-44 permitting an unconstitutional deprivation of property without limit, for purposes of malicious harassment or injury and without any statutory debtor defenses as to excessiveness, invalidity, harshness, notice, hearing or any opportunity to conduct defenses of a collateral nature or in the nature of a direct attack without first suffering massive injuries including the denial of the right to refinance, or to sell, or to buy when conditions are "good" and the widespread publication of the liens via recording in public records and a resultant republication in the Commercial Record.

This plaintiff complains that his properties have all been impounded under sole authority and color of state law G. S. 49-44 which provides no notice before or after the impounding and despite protests that the liens are void and invalid and subject to a multipicity of defenses the state law provides no avenue of relief or means of presenting these defenses.

Such a situation has been squarely and fairly reviewed by the UNITED STATES SUPREEE COURT in Griffin, supra, and held unconstitutional.

The Griffin, supra, case involved (as this action) the validity and applicability of full faith and credit as to a New York state judgment for alimony where execution was commenced in the District of Columbia. The District Court upheld the lien. The court of appeal upheld the district court. The UNITED STATES SUPREME COURT reversed and remanded holding due process was offended where Mr Griffin had his assets seized or executed on by reason of an out of state judgment when he contended that he had valid defenses including that the out of state judgment was invalid due to denial of due process.

Griffin P 228:

> Because of the omission, and to the extent that petitioner was thus deprived of an opportunity to raise defenses otherwise open to him under the law of New York against the docketing of judgment for accrued alimony, there was a want of judicial due process and hence want of that jurisdiction over the person of petitioner prerequisite to the rendition of a judgment *in personam* against him. *McDonald* v. *Mabee*, 243 U. S. 90; cf. *Webster* v. *Reid*, 11 How. 437, 459. The only indication in the record as to petitioner's residence at the time of the entry of the 1938 judgment is a recitation in the judgment itself that he was then a resident of the District of Columbia. But it is immaterial for present purposes whether or not petitioner was a domiciled resident of New York at the time, either within or temporarily without the State, or a resident of some other jurisdiction. It is plain in any case that a judgment *in personam* directing execution to issue against petitioner, and thus purporting to cut off all available defenses, could not be rendered on any theory of the State's power over him, without some form of notice by personal or substituted service. *Wuchter* v. *Pizzutti*, 276 U. S. 13, 18–20; Restatement of Conflict of Laws, § 75; and compare *Milliken* v. *Meyer*, 311 U. S. 457. Such notice cannot be dispensed with even in the case of judgments *in rem* with respect to property within the jurisdiction of the court rendering the judgment. *Roller* v. *Holly*, 176 U. S. 398, 409.
>
> A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction. *National Exchange Bank* v. *Wiley*, 195 U. S. 257; *Old Wayne Life Assn.* v. *Mc-*

III C. G. S. 49-44 CONSITUTES INVIDEOUS DISCRIMINATION IN FAVOR OF CREDITORS AND AGAINST DEBTORS IN VIOLATION OF THE CONSITUTION.

"It would be an idle parade of familiar learning to review the multitudinous cases in which the consitutional assurance of the equal protection of the laws has been applied. The generalities are not in dispute, their application turns peculiarly on the particular circumstances of a case."

Goesaert v Cleary 335 U. S. at 467

"While the equal protection clause does not require a legislature to acieve "abstract symmetry" or to classify with "mathematical nicety" that clause does require lawmakers to refrain from invidious distinctions of the sort drawn by the statute challenged in this case."

Skinner v Oklahoma 316 U S. 535

"A state law which taxes all the income of local corporations from income outside the state and local business while exempting entirely the income derived from outside the state by local corporations which do no local business, is arbitrary and violates the equal protection clause of the 14th Amendment.

F. S. Royster Guano Co v Virginia 253 U S412

This discriminatory taxation case spoke wise words applicable herein where the alleged creditors took under lien all of the property of this plaintiff for no ligitimate purpose but to cause "....total financial ruin."

See also Missouri Ex Rel Gaines v Canada 305 US 337

Yick Wo v Hopkins 118 U S. 356

III D. DEFENSES OF STATE OFFICERS ARE WITHOUT MERIT AND MUST BE RESERVED FOR HEARING BY A THREE-JUDGE COURT

Such defenses as have been filed by the state officer defendants are hopelessly without merit. Highlights of weaknesses in their position is given below to enlighten this court as to deficiencies in their argument yet without any doubt any decision on their argument must be deferred for hearing only by a three-judge court. Title 28 USC 2281, 2284.

III D 1 : KENT STATE _ STUDENT KILLINGS CASE PRECLUDES STATE OFFICER IMMUNITY FOR WILLFUL AND WANTON ACTS

In this action Plaintiff complains of the wilful and wanton and maliciousniess of the state officers in permitting the existance of G. S. 49-44 in violation of the federal constitution to cause damages and injuries to debtors such as this plaintiff. Under allegations of this type the civil rights action for damages in the Kent state student killings was dismissed. The U. S. Supreme Court reversed holding that allegations of this nature required a trial as to damages in respect to state officers who were not immune.

See Scheuer v Rhodes April 1974 42 L W 4543.

P 4544: "defendants are alleged to have "intentionally, recklessly, willfully and wantonly" caused an uneccessary deployment of th Ohio National Guard on the Kent State campus..... which resulted in the death of plaintiff's decedents"

P 4549: "we intimate no evaluation whatever as to the merits ..... we hold only on the allegations of the complaints, they were entitled to have them judicially resolved."

This case was reversed for further proceedings and trial.

III D 2 : THE DECISION IN THE WATER GATE TAPES ADVERSE TO FORMER PRESIDENT NIXON PRECLUDES STATE OFFICER DEFENSES

94 S Ct 3090 July 24, 1974 United States v Nixon

In this action former President Nixon claimed "immunity" due to his federal officer status as president. The U. S. Suprme Court held there was no immunity as to denial of due process unless the fate of the nation was at stake or military secrets at issue. Surely the Connecticut state officer defendants cannot meet the test of US v Nixon so as to fall within its immunity rules.

Respectfully Submitted:

By _____
STANLEY V. TUCKER

4

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER	:	
vs.	:	
THOMAS E. MESKILL, individually and in his capacity as GOVERNOR OF THE STATE OF CONNECTICUT, et al	:	CIVIL ACTION NO. H-74-358

NOTICE OF HEARING

Please take notice that the defendants, Stanley H. Page and Howard A. Newman, will bring the attached motion to dismiss on for hearing before the United States District Court, District of Connecticut, at Hartford, on Monday, December 16, 1974 at 10:00 a.m., or as soon thereafter as counsel may be heard.

DEFENDANTS,
Stanley H. Page and
Howard A. Newman

By James A. Wade

James A. Wade
Their Attorney
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut 06103

I hereby certify that I mailed a copy of the foregoing notice of hearing on December 3, 1974, to Stanley V. Tucker, Box 35, Hartford, Connecticut 06101.

James A. Wade

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER	:	
vs.	:	CIVIL ACTION NO. H-74-358
THOMAS E. MESKILL, individually and in his capacity as GOVERNOR OF THE STATE OF CONNECTICUT, et al	:	

MOTION TO DISMISS BY DEFENDANTS STANLEY H. PAGE AND HOWARD A. NEWMAN PURSUANT TO RULE 12(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Pursuant to Rule 12(b) of the Federal Rules of Civil Procedure the defendants, Stanley H. Page and Howard A. Newman, individually and as co-chairmen of the General Law Committee of the Connecticut General Assembly, move to dismiss the complaint against them for one or more of the following reasons:

FIRST COUNT: IN PERSONAM JURISDICTION

1. The defendant Stanley H. Page is a Connecticut State Legislator representing the Twelfth Senatorial District.

2. The defendant Howard A. Newman is a Connecticut State Legislator representing the One Hundred Thirty-seventh Assembly District.

3. Both of these defendants are members of the 1973-74 Connecticut General Assembly and serve as Co-Chairmen of the General Law Committee thereof.

4. The only allegation in the complaint against these defendants, either individually or in their representative capacity, is that they "wantonly and willfully [sic] and maliciously and negligently permitted the existence and continuance of state statute G.S. 49-44" which statute is under constitutional attack in this action, and that they failed to adopt certain legislation desired by the plaintiff.

5. This court lacks jurisdiction over the person of these defendants in that Article Third, Section 15 of the Connecticut Constitution (1965) guarantees these defendants immunity from being questioned in any other place for their words or deeds generally spoken or done in the course of their legislative duties.

SECOND COUNT: FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

1. Paragraphs 1 through 4 of the First Count of this Motion to Dismiss are hereby made corresponding paragraphs of this Count as though fully set forth herein.

5. The complaint fails to state a claim upon which relief can be granted as to these two defendants because:

a.) the complaint against these defendants is not justiciable in that it raises a claim which is essentially political in nature and does not raise issues susceptible of resolution by this court;

b.) the complaint fails to seek any affirmative action against these defendants insofar as the judgment liens complained of by the plaintiff are concerned;

c.) the complaint fails to seek any affirmative action on the part of these defendants insofar as the statute complained of is concerned;

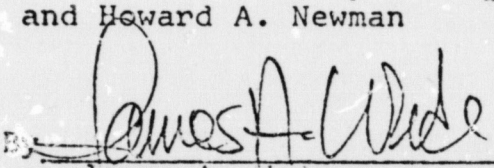
d.) the complaint fails to allege any acts or the violation of any affirmative duty by these defendants which warrants the relief against them sought by the plaintiff;

e.) the complaint fails to allege any acts or the violation of an affirmative duty by these defendants in their individual capacity at all;

f.) the second cause of action alleged in the complaint fails to allege any claim against these defendants at all.

WHEREFORE, the defendants Stanley H. Page and Howard A. Newman respectfully move that the complaint against them be dismissed.

DEFENDANTS, Stanley H. Page
and Howard A. Newman

By 

James A. Wade
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut 06103

O R D E R

So ORDERED this day of , 1974.

United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER	:	
	:	
vs.		CIVIL ACTION NO. H-74-358
	:	
THOMAS E. MESKILL, individually and in his capacity as GOVERNOR OF THE STATE OF CONNECTICUT, et al	:	

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
BY DEFENDANTS PAGE AND NEWMAN

The defendants Page and Newman are a State Senator and a State Representative representing the Twelfth Senatorial District and the One Hundred Thirty-seventh Assembly District respectively. Both are members of the 1973-1974 Connecticut General Assembly and they chair the General Law Committee thereof. (See affidavits of Senator Page and Representative Newman attached hereto).

The only allegations against these defendants are that they in their capacity as state officers "have wantonly and willfully [sic] and maliciously and negligently permitted the existence and continuance of state statute G.S. 49-44." Complaint, Paragraph 10. The complaint goes on to allege that these defendants delayed in enacting legislation in response to certain decisions by the United States Supreme Court but did so finally by enacting Public Act 73-431. (Complaint Paragraph 14). No other claims are alleged

against these defendants in the First Cause of Action. The Second Cause of Action is totally silent as to these defendants since the only paragraphs wherein they are mentioned in the First Count (paragraphs 10 and 14) are not incorporated by reference into the Second Count.

The prayer for relief does not seek any equitable relief from these defendants since the only equitable prayer is to require the appropriate defendants (unnamed) promptly and properly to prepare and record releases of the judgment lien complained of and to cease from recording any such liens in the future. There is no claim that these defendants either recorded such liens or have the power to release the same. No claim is made that they should introduce or adopt any remedial legislation (assuming of course they had the power to do so).

II. ARTICLE THIRD SECTION 15 OF THE CONNECTICUT CONSTITUTION (1965) PROTECTS STATE LEGISLATORS FROM BEING QUESTIONED "IN ANY OTHER PLACE" ABOUT THEIR LEGISLATIVE DUTIES.

The Connecticut Constitution (1965) contains a "speech and debate clause"[1] which tracks identically with that contained in the United States Constitution.[2] While this portion of the Connecticut Constitution has never been judicially interpreted,[3]

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1 Connecticut Constitution, Article Third, Section 15 provides: The senators and representatives shall in all cases of civil process, be privileged from arrest during any session of the general assembly and for four days before the commencement and after the termination of any session thereof. Andy for any speech or debate in either house, they shall not be questioned in any other place.

2 Constitution of the United States, Article 1, Section 6 provides in part: . . . and for any Speech or Debate in either House they [the senators and representatives] shall not be questioned in any other place.

3 There is presently pending a libel action in the Superior Court for Hartford County against a sitting state legislator wherein the Connecticut Speech and Debate Clause is for the first time being interpreted by the Connecticut court. See Harvey Kagan, et al v. Edgar King, Superior Court Docket No. 189957. No ruling has been issued by the state court as of the date of this brief.

The oft quoted purpose of the Speech and Debate Clause of the United States Constitution is to "prevent intimidation of legislators by the Executive and accountability before a possible hostile judiciary". Gravel v. United States, 408 U.S. 606, 617 (1972); Pavell v. McCormack, 395 U.S. 486, 502 (1969); United States v. Johnson, 383 U.S. 169, 181 (1966). Whenever it has been called upon to interpret this historic language the court has done so gingerly fully recognizing the delicate balance between the branches of government, leading Chief Justice Burger to note in United States v. Brewster, 408 U.S. 501, 508 (1971):

> Although the Speech or Debate Clause's historic roots are in English history, it must be interpreted in light of the American experience, and in the context of the American constitutional scheme of government rather than the English parliamentary system. We should bear in mind that the English system differs from ours in that their Parliament is the supreme authority, not a coordinate branch. Our speech or debate privilege was designed to preserve legislative independence, not supremacy. Our task, therefore, is to apply the Clause in such a way as to insure the independence of the legislature without altering the historic balance of the three co-equal branches of Government.

What the Speech or Debate clause does is create a privilege which cloaks the words and deeds of a legislator, immunizing him from civil and criminal prosecution. As was said in United States v. Johnson, supra 383 U.S. at 179:

> The legislative privilege protecting against possible prosecution by an unfriendly executive and conviction by a hostile judiciary is one manifestation of the "practical security" for ensuring the independence of the legislature.

It is this legislative independence that these defendants are asserting herein. They should not be required to respond in a

court of law and to defend any action which essentially involves a dispute between private citizens simply because a statute with which one party takes issue happens to have been enacted by some previous General Assembly. To hold otherwise would be to expose legislators to suit every time the constitutionality of a statute is called into question.

The concept that a court is without power to hear and determine claims against a state legislator otherwise protected by the Speech and Debate Clause, was established in Tenney v. Brandhove, 341 U.S. 367 (1950). In that case plaintiff sought to enjoin the members of the California Legislature's Senate Fact Finding Committee on Un-American Activities from convening a so-called investigative hearing on the ground that the real purpose of the hearing was to smear him. The Supreme Court upheld the decision of the District Court dismissing the complaint regardless of the unworthy purposes or motive that the legislators might have had. In doing so the court said:

> Investigations, whether by standing or special committees, are an established part of representative government. Legislative committees have been charged with losing sight of their duty or disinterestedness. In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed. Courts are not the place for such controversies. Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses. The courts should not go beyond the narrow confines of determing that a committee's inquiry may fairly be deemed withing its province. 341 U.S. at 377-378.

In its opinion in Tenney, the Supreme Court quoted with approval the language of Chief Justice Parsons in Coffin v. Coffin, 4 Mass. 1, 27 (1808)in which he said:

> "[The Massachusetts legislative privilege] ought not to be construed strictly, but liberally, that the full design of it may be answered. I will not confine it to

> delivering an opinion, uttering a speech, or haranguing in debate; but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature, and in the execution, of the office: and I would define the article, as securing to every member exemption from prosecution for every thing said or done by him, as a representative, in the exercise of the functions of that office without enquiring whether the exercise was regular according to the rules of the house, or irregular and against their rules. I do not confine the member to his place in the house; and I am satisfied that there are cases, in which he is entitled to this privilege, when not within the walls of the represenatatives chamber."

Thus it has been held that the "legislative privilege will be read broadly to effectuate its purposes," United States v. Johnson, supra at p. 180; Gravel v. United States, 408 U.S. 606, 624 (1972); Doe v. McMillan, U.S. , 36 L.Ed. 2d. 912, 920 (1973), and includes within its protection anything "generally done in a session of the House by one of its members in relation to the business before it." Kilbourn v. Thompson, 103 U.S. 168, 204 (1880); United States v. Johnson, supra at p. 179; Gravel v. United States, supra, at p. 624; Powell v. McCormack, 395 U.S. 486, 502 (1969); United States v. Brewster, supra, at pp. 509, 512-513.

The reach of the clause extends to both civil and criminal prosecutions. Johnson, supra, involved the conviction of a former United States Congressman who was convicted of conspiring to make a speech for compensation on the floor of the House of Representatives along with other charges. The Supreme Court affirmed the Court of Appeals decision setting aside that portion of the conviction holding that prosecution under a general criminal statute was barred by the speech or debate clause. Id. at pp. 184-185

In Tenney v. Brandhove, supra, the Supreme Court acknowledging that a similar privilege was operative for state legislators based upon a similar provision in a state constitution, noted that at the time forty states (Connecticut among them) had constitutional provisions containing the protection of the privilege. In upholding the privilege the court said in 341 U.S. at p. 377:

> The claim of an unworthy purpose does not destroy the privilege. Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must no expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives. The holding of this Court in Fletcher v. Peck, 6 Cranch 87, 130, that it was not consonant with our scheme of government for a court to inquire into the motives of legislators, has remained unquestioned. See cases cited in Arizona v. California, 283 U.S. 423, 455.

More recently the Supreme Court has held that the privilege extends not only to legislators to but their aides and staff who are engaged in assisting the members of the Congress in fulfilling their day to day functions as legislators. Gravel v. United States, supra, 408 U.S. at 616. Thus it can be seen that the courts have broadly interpreted the Speech and Debate clause to bring within its protection those acts or words of a legislator generally done by a legislator in relation to the business before the house of which he is a member.

In the present case there is no claim of individual wrongdoing by either of the defendants Page or Newman. The sole allega tions involving them claim that they permitted certain legislat

to continue to exist[4] and that they delayed in taking affirmative action regarding prejudgment remedies. Surely these allegations fail to lift the principle of immunity from suit guaranteed these legislators by Article Third Section 15 of the Connecticut Constitution.

III. THE COMPLAINT FAILS TO STATE FACTS INVOLVING THESE DEFENDANTS UPON WHICH RELIEF CAN BE GRANTED

Assuming this court believes that the defendants Page and Newman are not immune from suit on the basis of Connecticut's Speech and Debate clause, an examination of the complaint and the relief sought reveals that no claim has been alleged against them upon which relief can be granted. They are not necessary parties to any suit to determine the constitutionality of Section 49-44, and therefore the complaint against them should be dismissed.

A. Political Question Doctrine. The only claim against these defendants is that they failed in their capacities as state legislators to take action to repeal Section 49-44. Obviously the plaintiff seeks a political not a judicial remedy in this regard. His forum should appropriately be the Connecticut General Assembly, not this court.

It is well established that the federal courts will not adjudicate political questions. Powell v. McCormack, 395 U.S. 486 (1969); Coleman v. Miller, ~~307~~ 307 U.S. 433 (1939); Oetjen v. Central

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4 It is interesting to note that Connecticut General Statutes, §49-44, of which the plaintiff complains, has existed in its present form since 1949, with a history extending back to 1902. Neither of these defendants even participated in its enactment. The plaintiff has made no allegation that he ever sought their aid in attempting the repeal of this law.

Leather Co., 246 U.S. 297 (1918)[5]. In Baker v. Carr, 369 U.S. 186, 217 (1962), the Supreme Court listed six categories of cases which historically involve questions deemed political and therefore non-justiciable:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government;or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

In the present case, based upon the allegations against these defendants it is clear that all the plaintiff seeks from them is the repeal of Section 49-44. While this court may have the power to declare that statute unconstitutional, it is powerless to compel a repeal thereof. Even assuming these two defendants could by themselves marshall the votes to achieve such a result, since the rest of the members of the Connecticut General Assembly are not parties to this action, any order by this court as to these defendants would not be enforceable as to the Assembly as a whole. If Mr. Tucker seeks repeal of Section 49-44, let him seek out the political solution.

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5 The primary underpinning of the political question doctrine has been the separation of powers within the federal government. Baker v. Carr, 369 U.S. 186, 217 (1962). However, in view of the clear separation of powers doctrine established by Article Second of the Connecticut Constitution (1965) and the many decisions of the Connecticut Supreme Court enforcing same, the analogy seems apparent. See e.g. Szarwak v. Warden, 36 Conn. Law Journal, No. 4, (July 23, 1974);Adams v. Rubinow, 157 Conn. 150, 251 A.2d 49 (1968); Walkinshaw v. O'Brien, 130 Conn. 122, 32 Atl. 547 (1943); Styles v. Tyler, 64 Conn. 432, 38 Atl. 165 (1894).

B. No Affirmative Action Sought Against These Defendants.

Having claimed that these defendants "permitted" Section 49-44 to continue to exist as a statute, the plaintiff then ignores them as to any claim for relief. He neither asks for the repeal of the law nor that they take any action insofar as the judgment liens filed against him are concerned. Once again it is obvious that he cannot seek such relief because it is impossible for this court to order the same. Since these defendants are not necessary for an adjudication of the constitutionality of the statute complained of, the case should be dismissed as to them.

C. No Claim of a Violation of either a Representative or Individual Duty.

Nowhere in the complaint does the plaintiff claim that these defendants have failed to fulfill any duty towards him in either a representative or individual capacity. While it is alleged that each of them were sworn to uphold the federal constitution and to administer the laws of Connecticut, nowhere is it alleged that they violated those mandates other than to "permit" a statute to remain law which, on its face, is presumed[7] constitutional unless decreed otherwise by a court. It appears that the allegations against these defendants serve no function other than to mention them as part of the political process. There is no claim that either of them failed to fulfill any of their responsibilities by not affirmatively seeking the repeal of Section 49-44.[8]

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7 A state statute is presumed to be constitutional. Montano v. Lee, 298 F. Supp. 865, 869 (D.C. Conn. 1967); aff'd. 384 F.2d 172 (2d Cir. 1967).

8 It is interesting to note that any bill dealing with judgment liens would properly come under the jurisdiction of the Joint Committee on Judiciary, not the Joint Committee on General Law. See Joint Rules of the Senate and House of Representatives, State of Connecticut, 1973-1974 Session, Rules 3(g) and (p), p. 72. It appears that these defendants are not even the proper parties to begin the process to effectuate the repeal of Section 49-44.

The only claim against these defendants individually is in the title to the action. No facts are alleged against them in their individual capacities. Accordingly, the complaint should be dismissed as to Messrs. Page and Newman as individuals on that basis alone.

D. Second Count Alleges no Facts Against these Defendants.

Regardless of the failings of the First Count to state a claim upon which relief can be granted, the Second Count is utterly deficient since the only two paragraphs in which these defendants are mentioned in the First Count are not incorporated by reference into the Second. Absent any factual allegations against Messrs. Page and Newman in the Second Count, it should be dismissed as to them.

CONCLUSION

It is respectfully submitted that Senator Page and Representative Newman are protected by Article Third, Section 15 of the Connecticut Constitution (1965) from having to answer in any other place for their doings as legislators. The only claim against them deals directly with their offices as legislators. They are not necessary parties to an adjudication of the constitutionality of Section 49-44 of the Connecticut General Statutes. Therefore, the complaint against them should be dismissed.

In the alternative, the complaint against them should be dismissed because it raises fundamentally a political non-justiciable issue, i.e. the repeal of a state statute. Additionally, no facts are alleged or relief sought which sets forth a cause of action against these defendants.

Respectfully submitted,

DEFENDANTS,
State Senator Stanley H. Page and
State Represenative Howard A. Newman,
Individually and in their representative capacities.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER	:	
	:	
vs.		
	:	CIVIL ACTION NO. H-74-358
THOMAS E. MESKILL, individually and in his capacity as GOVERNOR OF THE STATE OF CONNECTICUT, et al	:	

AFFIDAVIT OF DEFENDANT
STATE SENATOR STANLEY H. PAGE

I, STANLEY H. PAGE, being first duly sworn, depos and say:

1. That I am a Connecticut State Senator representing the Twelfth Senatorial District.

2. That I am a member of the 1973-1974 Connecticut General Assembly.

3. That I am a co-chairman of the General Law Committee of the Connecticut General Assembly.

Dated at Hartford, Connecticut, this of December, 1974.

Stanley H. Page
Connecticut State Senator
Twelfth Senatorial District

Sworn to and subscribed
before me this day
of December, 1974

Notary Public
My Commission expires:

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER	:	
	:	
vs.		
	:	CIVIL ACTION NO. H-74-358
THOMAS E. MESKILL, individually and in his capacity as GOVERNOR OF THE STATE OF CONNECTICUT, et al	:	

AFFIDAVIT OF DEFENDANT
STATE REPRESENTATIVE HOWARD A. NEWMAN

I, HOWARD A. NEWMAN, being first duly sworn, depose and say:

1. That I am a Connecticut State Representative, representing the One Hundred Thirty-seventh Assembly District.

2. That I am a member of the 1973-1974 Connecticut General Assembly.

3. That I am a co-chairman of the General Law Committee of the Connecticut General Assembly.

Dated at Hartford, Connecticut, this 4th day of December, 1974.

Howard A. Newman
Connecticut State Representative
One Hundred Thirty-seventh
Assembly District

Sworn to and subscribed
before me this 4th day
of December, 1974.

Commissioner of the Superior Court

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER :

-v- : C. A. NO H 74-358

THOMAS E. MESKILL, individually and in his capacity as Governor of the State of Connecticut, Et Al.

STIPULATION AND ORDER

It is hereby stipulated by and between the parties hereto as follows:

1. That the complaint be deemed amended to state the name of Defendant, Stanley H. Paige, as Stanley H. Page.

December 23, 1974 By Stanley V. Tucker

STANLEY V. TUCKER/PLAINTIFF

By_____

JAMES A. WADE as attorney for and on behalf of Defendant, STANLEY H. PAGE individually and in his capacity as STATE SENATOR and CHAIRMAN OF THE GENERAL LAW COMMITTEE OF THE CONNECTICUT GENERAL ASSEMBLY

O-R-D-E-R

The foregoing is hereby ORDERED GRANTED / DENIED.

THE COURT

Dated:_____ BY_____
UNITED STATES DISTRICT JUDGE

STANLEY V. TUCKER :

-v- : CIVIL ACTION H-74-358

THOMAS E. MESKILL, individually
and in his capacity as GOVERNOR OF
THE STATE OF CONNECITUCT, ET AL

BRIEF IN OPPOSITION TO MOTION TO DISMISS
BY DEFENDANTS PAGE AND NEWMAN
****

I. BACKGROUND

I. A. INTRODUCTION: Defendant herein, Senator Page and Assemblyman Newman, gratuituously supplied affidavit affirming their official state officer status thus confirming the allegations of the complaint. It is undisputed that both took an oath of office and have a duty to upholdthe federal and state of Connecticut Constitutions.

CONN G. S. 1-25: § 1-25. Forms of oaths

The forms of oaths shall be as follows, to wit:

FOR MEMBERS OF THE GENERAL ASSEMBLY,
EXECUTIVE AND JUDICIAL OFFICERS
AND NOTARIES PUBLIC

You do solemnly swear (or affirm, as the case may be) that you will support the constitution of the United States, and the constitution of the state of Connecticut, so long as you continue a citizen thereof; and that you will faithfully discharge, according to law, the duties of the office of ..... to the best of your abilities. So help you God.

I. B. DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO DIMISS IS MISLEADING AS TO THE ISSUES

Plaintiff contends that defendant's brief is not directed at the true issues herein but misleadingly "treats" as follows:

1. assumption that this complaint falls under the state legislator "free speech and debate" priviledge.
2. assumption that the state legislator "speech and debate" priviledge is equal to or greater than THE UNITED STATES CONSTITUTION.
3. Ignores the supremacy of the federal constitution and the due process and equal protection clause as to the state legislator "speech and debate" priviledge.

I. C. DEFENDANT'S CITATIONS: The defendants make use of approximately a dozen federal cases totalling approx 400 pages of opinion upon an unsupported assumption that a "speech and debate" priviledge under the state constitution is equal to the "speech and debate"priviledge of a federal legislator. There is no grounds for such a far ranging "stretch" of the federal priviledge. In addition, repeatedly the defendants quote extracts of federal cases under factually distinguishable circumstances or using incomplete extracts upon erronious assumptions as to the issues.

Many cases used by Defendants when read as to the issues briefed by Plaintiff uphold jurisdiction and oppose the motion to dismiss. Finally the defendants have ignored the great "immunity " case of 1974, namely United States v Nixon, 94 S Ct 3090, and Scheuer v Rhodes 42 L W 4543, the great "state officer" case of 1974.

I. D. TRUE ISSUES AS TO STATE LEGISLATOR DEFENDANTS

1. The first major issue is that the state legislators are not being sued for any speech or debate in connection with any legislative functions and not even for speech and debate outside of legislative functions but instead for a "wantonly and willfully and maliciously and negligently failing"to take any action in spite of their oaths of office thus permitting unconstitutionl injuries to occur under color of Conn. G. S. 49-44 despite clearly conflicting decisions of the UNITED STATES COURT. A willful and wanton failure to carry out sworn duties under the federal constitution is a vastly different claim for injuries than claims involving the " speech or debate" priviledge under the state constitution.

2.. The second major issue as developed by recent decisions of the United States Supreme Court is that the state "speech and debate" priviledge of the state legislator defendants is SUBORDINATE TO Paaintiff's federal constitutional rights to due process and equal protections of the laws. It is to this latter issue that Plaintiff directs the major thrust of argument below.

ARGUMENT

II. THE PRINCIPLES AFFIRMED IN UNITED STATES V NIXON, 94 S. Ct 3090, June 24th, 1974 ESTABLISH PLAINTIFF's FEDERAL DUE PROCESS AND EQUAL PROTECTION RIGHTS AS SUPERIOR TO DEFENDANT'S STATE "PRIVILEDGE"

Former President Nixon claimed an absolute executive priviledge under the Federal Constitution Article II. In a somewhat analagous (yet inferior basis) the state legislator defendants claim a priviledge under Article 3 Section 15 of the state of Connecticut Constitution.

The thrust of former President Nixon's argument was that his priviledge was superior to the due process and equal protection claims of defendants in federal criminal trials who were former colleages or agents of President Nixon.

The clear compelling language of the U.S. v Nixon, supra, opinion must quickly shatter beyond all recovery any inferences by state legislator defendants that their "speech and debate" priviledge is superior to this Plaintiff's due process and equal protection claims under the federal constitution as to the illegal liens filed upon his properties.

A second defense maintained by former President Nixon (again analagous to state legislators herein) was "political" or "intra-executive" matters were involved and thus not a matter to be litigated in the courts. This same argument appears on Page 7 of Defendant's Brief in support of Motion to Dismiss. This argument and second defense of former President Nixon was rejected by the UNITED STATES SUPREME COURT.

United States v Nixon at P 3090 rejects the executive priviledge:

> that President's generalized interest in confidentiality, unsupported by claim of need to protect military, diplomatic, or sensitive national security secrets, could not prevail against special prosecutor's demonstrated, specific need for the tape recordings

This "special priviledge" or "immunity" was again rejected on P 3096:

> 4. Neither the doctrine of separation of powers nor the generalized need for confidentiality of high-level communications, without more, can sustain an absolute unqualified presidential privilege of immunity from judicial process under all circumstances. See, e. g., Marbury v. Madison, 1 Cranch 137, 177, 2 L.Ed. 60; Baker v. Carr, 369 U.S. 186, 211, 82 S.Ct. 691, 706, 7 L.Ed.2d 663. Absent a claim of need to protect military, diplomatic, or sensitive national security secrets, the confidentiality of presidential communications is not significantly diminished by producing material for a criminal trial under the protected conditions of *in camera* inspection, and any absolute executive privilege under Art. II of the Constitution would plainly conflict with the function of the courts under the Constitution. Pp. 3105–3107.

U. S. v Nixon rejects the second defense of a "political" or "non-justiciable" question . This same defense by the state legislators must be rejected on identical grounds.

at P 3098:

The District Court rejected jurisdictional challenges [illegible] a contention that the dispu[illegible]onjusticiable because it was between the Special Prosecutor and the Chief Executive and hence "intra-executive" in character; it also rejected the contention that the judiciary was without authority to review an assertion of executive privilege by the President. The court's rejection of the first challenge was based on the authority and powers vested in the Special Prosecutor by the regulation promulgated by the Attorney General; the court concluded that a justiciable controversy was presented. The second challenge was held to be foreclosed by the decision in Nixon v. Sirica, 159 U.S.App.D.C. 58, 487 F.2d 700 (1973).

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-G 5-

at P 3100:

[8, 9] The mere assertion of a claim of an "intra-branch dispute," without more, has never operated to defeat federal jurisdiction; justiciability does not depend on such a surface inquiry. In United States v. ICC, 337 U.S. 426, 69 S.Ct. 1410, 93 L.Ed. 1451 (1949), the Court observed, "courts must look behind names that symbolize the parties to determine whether a justiciable case or controversy is presented." *Id.*, at 430, 69 S.Ct., at 1413. See also: Powell v. McCormack, 395 U.S. 486, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969); ICC v. Jersey City, 322 U.S. 503, 64 S.Ct. 1129, 88 L. Ed. 1420 (1944); United States ex rel. Chapman v. FPC, 345 U.S. 153, 73 S.Ct. 609, 97 L.Ed. 918 (1953); Secretary of Agriculture v. United States, 347 U.S. 645, 74 S.Ct. 826, 98 L.Ed. 1015 (1954); FMB v. Isbrandsten Co., 356 U.S. 481, 482 n. 2, 78 S.Ct. 851, 853, 2 L.Ed.2d 926 (1958); United States v. Marine Bancorporation Corp., — U.S. —, 94 S.Ct. 2856, 40 L.Ed.2d — (1974), and United States v. Connecticut National Bank, — U.S. —, 94 S.Ct. 2788, 40 L. Ed.2d — (1974).

III. RECENT DECISION IN THE KENT STATE STUDENT KILLINGS AFFIRMS THAT THIS CASE SHOULD GO TO TRIAL ON THE MERITS

Scheuer v Rhodes 42 LW 4543 April 1974

Prior to Scheuer, supra, decisions as to damages in federal civil rights cases were in conflict between the circuits. Some circuits, such as the 1st and 5th C.A.s, routinely awarded damages under a valid claim under Title 42 USC 1983.

See: Whirl v Kern 407 F 2d 781 (1969)

P 782: "Ignorance by sheriff who detained in jail almost nine months after dismissal of indictments..... was no defense to an action for deprivation of civil rights....."

Other circuits, like the 2nd C. A., imposed a "good faith" defense. An example involved this litigant in another action in Tucker v Maher, 497 F 2d 1309, May 7, 1974, Certiorari Denied 43 U. S. L. W. 3276, November 12, 1974.

P 1315 : "Constitutional law, particularly in this difficult and confusing area of state action and due process, is hardly predictable with any degree of certainty."

The Scheuer, supra, decision established firmly that as to the federal civil rights statutes, 42 USC 1983, state officers have only a limited immunity when acting strictly within the scope of their duties and further that injuries falling within the allegations of "intentialally, recklessly, willfully and wantonly" justified reversing the lower court dismissals and remanding the action for trial on the merits. See P 4544 and 4549.

"We intimate no evaluation whatever as to the merits.. we hold only on the allegations of the complaints they were entitled to have them judicially resolved."

The allegations used in the complaint in this action meet the test established by Schuerer, supra, and this case also should "go to trial on the merits."

IV. CASES CITED BY DEFENDANTS READ IN LIGHT OF ISSUE OF SUPREMACY OF FEDERAL CONSTITUTION SUPPORT DENIAL OF MOTION TO DISMISS.

A. FROM EARLIEST TIMES STATE LEGISLATORS HAVE BEEN LIABLE UNDER "EXTRORDINARY CIRCUMSTANCES"

The earliest case citdd by defendants comes from 1880, Kilborn v Thomspson, 103 U. S. 168. This action involved power of Congress to sentence to prison for contempt of Congress and the resulting order by Congress for imprisonment was adjudicated as "Void". The court clarified liability under the federal "speech and debate priviledge".

P 204: " It is not necessary to decied here that there may not be things done, in the one house or the other, of an extraordinary character, from which the members who take part in the act may be held responsible."

B. THE SPEECH AND DEBATE CLAUSE DOES NOT PROTECT LEGISLATORS FROM CRIMES.

A more recent case used by Defendants involved a former senator charged with accepting bribes for official acts. The District Court dismissed based on the "speech and debate privilegge". The U. S. Supreme Court reversed and remanded. U. S. v Brewster 408 US 501 June 1972.

See P 501 Burger, Chief Judge:

"1. The court had jurisdiction
2. the speech and debate clause does not protect as to activities thatare political rather than legislative
3. taking a bribe is not part of the legislative function.
4. the speech or debate clause did not prevent indictment and prosecution for taking bribes."

Following the clear reasoning of Chief Justice Burger the state legislators are not immune for "willful and wanton" failure or neglect to take any action to protect the rights of this Plaintiff, citizen of Connecticut to due process and equal protection of the laws as those rights were defined by decisions of the UNITED STATES Sp. Ct.

IV. C. SPEECH AND DEBATE CLAUSE HELD NOT TO PROTECT LEGISLATORS AGAINST UNCONSTITUTIONAL CONDUCT.

Another case cited by Defendants in context of the supremacy of the federal constitution affirms that the motion to dismiss must be denied is Gravel v U. S. 408 U. S. 606. 33 L Ed 2d 583 1972. Senator Gravel releasing secret defense papers was held immune under free speech and debate by the district court of Massachusetts and the 1st C. A. affirmed. The U. S. Supreme Court vacated and reversed holding as follows:

33 L Ed 2d 584:"(4) the speech or debate clause should not be extended to protect illegal or uncontitutional conduct"

Strong words most appropriate to this action where Plaintiff contends illegal injury under color of unconstitutional statutes that exist due to "willful and wanton neglect" of oath of office by state legislators.

V. STATE COURTS LONG AGO SETTLED LIABILITY OF STATE OFFICERS FOR VIOLATIONS OF THEIR DUTIES AND DEFENDANTS FAIL TO STATE ANY FEDERAL GROUNDS TO OVERTHROW STATE COURT PRECIDENTS.

It is beyond dispute that where state courts settle a question of state law the federal courts will not over throw the decisions without some compelling federal grounds In this action there are no federal grounds available to the state legislator defendants as defense. Their sole defense raised to this date is that they seek to use without justification or supporting citations federal cases to crutch up a state constitutional defense. This defense is raised by a brazen assertion that the state law on "speech and debate" "tracks" the federal law.

A recent case pending in the state Superior Court of Hartford, Kagan v King, Docket No 189957, involves a libel action against a state legislators for speech made during the legislative process. At issue is the claim for damages overriding the privilege as to words used that were not essential to legislative functions.

A current review of the civil index of the Hartford Superior Court shows apprximately 14 civil actions with many, many state of Connecticut officer defendants with captioning ususally with defendant as "Governor of Conn" or "Thomas E. Meskill, et al. Examination of the files fails to discover any dismissals on grounds such as contended by defendants in this action. Surely, if the state courts routinely go to judgment on actions with state officer defendants so too should the federal courts.

In one action, Hartford Superior C. A. No 170834, Tolland-Windham Legal Assistance v Thomas E. Meskill, a Plea in Abatement as to jurisdiction was filed on grounds somewhat analagous to this action. On July 6th, 1971 Judge Levine of the Hartford Superior Court overruled the Plea in Abatement and the case is on the trial list. So too, should this court deny the motion to dismisss.

V. CONCLUSION

The case against the state legislator defendants is based on the supremacy of the federal constitution as set forth in U. S. v Nixon, supra. The allegations of the complaint set forth a claim for damages under color of G. S. 49-44 to federally protected rights due to willful and wanton neglect of duty by state legislator defendants who failed to perform sworn duties.

The motion to dismiss should be denied and the case should go to a three-judge district court for hearing on the constitutional issues.

By_____
STANLEY V. TUCKER

Certificate of Service By Mail

I, STANLEY V. TUCKER, hereby certify that the foregoing Brief was served on Defendants Page and Newman this date by depositing a copy in the U. S. mails pastage prepaid first class and addressed to attorney for said defendants as follows.

James Wade, Esq
799 Main Street
Hartford, Conn 06103

Dec 23, 1974 By_____
STANLEY V. TUCKER

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER :

-vs- : Civil No. H 74-358

THOMAS E. MESKILL, Individually & in his capacity as Governor of the State of Connecticut, et al :

RULING ON DEFENDANTS' MOTIONS TO DISMISS

This pro se civil rights action[1] represents still another effort by the plaintiff Stanley Tucker, to escape the ultimate effect of judgments entered against him in the California state and federal courts. The pertinent factual background was previously set forth in this Court's Ruling on Cross-Motions for Summary Judgment in Tucker v.Neal, Civil No. H-8 (March 6, 1974).

The public officers who are named here as defendants, are sued both in their official and individual capacities; Thomas E. Meskill, former Government of Connecticut (term now expired); Stanley H. Page, a Connecticut State Senator and former Co-chairman of the Legislature's General Law Committee; Howard A. Newman, a Connecticut State Representative and also a former Co-chairman of the General Law Committee; and John P. Cotter, who serves both as an Associate Justice of the Connecticut Supreme Court and Chief Court Administrator for the State. The individually named defendants are California citizens who were involved in the original litigation against this plaintiff in the California state courts.

The legal action of these defendants led to their filing these judgment liens, which the plaintiff would now challenge and attempt to strike down. While the addition of the governmental defendants in this suit does nothing to diminish the conclusive effect which should be accorded to the prior ruling in Tucker v. Neal, supra, where the same basic issues were considered, the Court deems it appropriate to briefly discuss each of the plaintiff's claims, in the hope that the ultimate goal of finality in this litigation, to which the prior ruling was directed, might be achieved.

The gist of the first count of the complaint was addressed to the defendant public officers and asserts that Conn. Gen. Stat. § 49-44, which authorizies the filing of judgment liens[2/], violates the plaintiff's rights to due process and to equal protection, under the fourteenth amendment to the United States Constitution. The second count or cause of action alleges an "Abuse of Process." It claims that the individually named defendants have maliciously filed "excessive" judgment liens against the plaintiff's property for the designed purpose of causing the plaintiff's financial ruin. The plaintiff seeks one million dollars in damages against all defendants, the discharge and release of the allegedly excessive liens, and the convening of a three-judge district court to enjoin the enforcement of § 49-44 of the state law on constitutional grounds.

The defendants, on the other hand, have moved to dismiss as to all defendants, pursuant to Rule 12(b)(6), Fed. R. Civ. P., for failure to state a claim upon which relief can be granted. The Court finds no legal merit to the plaintiff's claim and accordingly dismisses the complaint.

This Court previously decided adversely to the plaintiff, the same jurisdictional issues relating to the finality of the California federal court judgment and the validity of the procedures by which said judgment was registered in this District under 28 U.S.C. § 1963. Tucker v. Neal, supra, at 10. This Court has also previously upheld the validity of the California state court judgments, upon which the federal judgments were based, against the plaintiff's attempted collateral and jurisdictional attacks. Id. at 13-15. Therefore, any responsible reference in the plaintiff's complaint to the term "pretended judgments" must be disregarded. The issues which the plaintiff seeks to raise relate solely to the constitutionality of the Connecticut judgment lien statute, and its alleged misuse by the named individual defendants.

The damage claims against the public officers are totally groundless, because their exists no legal duty, statutory or otherwise, for any of them to act as the plaintiff suggests. Nor has the plaintiff even alleged that he himself has ever petitioned the state government or any officer thereof to amend or modify the statute, of which he now complains they

have failed to do. Furthermore, it becomes obvious that the named private party defendants cannot be held liable for damages in any civil rights action, where they have followed the presumptively constitutional statutory judgment lien procedures. Tucker v. Maher, 497 F.2d 1309, 1313-4 (2d Cir.) cert. denied, 43 U.S.L.W. 3280 (Nov. 11, 1974); Rios v. Cessna, Fin. Corp., 488 F.2d 25 (10th Cir. 1973).

The two state legislators are clearly protected by the legislative immunity provisions of Article Third, Section 15, covering the Speech or Debate Clause in the Connecticut Constitution (1965). See, e.g., Tenny v. Brandhove, 341 U.S. 367 (1951). The status of absolute judicial immunity similarly cloaks the defendant Cotter, as Judicial Officer and Chief Court Administrator, for the official acts which are required of him to be performed in his judicial capacity. Pierson v. Ray, 386 U.S. 547 (1967). The claim alleged against former Governor Meskill is that as the Chief Executive of the State, he should have initiated a change in the statutory procedures concerning judgment liens. The Court finds that he was under no obligation so to do and that he violated no statutory or common law duty in not taking affirmative action in this regard. See: Scheuer v. Rhodes, 416 U.S. 232 (1974).

It is clear that the Court's acceptance of the plaintiff's theory, would require that these four public officer defendants be held financially liable for failing to act to change

a law, which has never been declared unconstitutional. The application of such a theory would constitute an unwarranted violation of the constitutional principle guaranteeing the separation of powers of state government, which is set forth in Article Second of the Connecticut Constitution (1965). Extended discussion of these points would be purposeless, since the basis for the plaintiff's damage claims, the constitutional attack on § 49-44, is itself subject to dismissal.

The plaintiff contends that the Connecticut Judgment — Lien Statute, Conn. Gen. Stat. § 49-44, deprives him of his rights to due process and equal protection under the fourteenth amendment, and requests that a three-judge district court be convened pursuant to 28 U.S.C. §§ 2281 and 2284 to enjoin the enforcement of that statute. The threshold standard of constitutional substantiality which determines the need for a three-judge court is not a very demanding one. However, in Goosby v. Osser, 409 U.S. 512 (1972), the Supreme Court reiterated the principle that "§ 2281 does not require the convening of a three-judge court when the constitutional attack upon the state statute is insubstantial." Id. at 518. The Court then went on to emphasize the narrow scope of the insubstantiality doctrine:

> "'Constitutional insubstantiality' for this purpose has been equated with such concepts as 'essentially fictitious,' Bailey v. Patterson, 369 U.S., at 33; 'wholly insubstantial," ibid; 'obviously frivolous,' Hannis Distilling Co. v.

> Baltimore, 216 U.S. 285, 288 (1910); and 'obviously without merit,' Ex parte Poresky, 290 U.S. 30, 32 (1933). The limiting words 'wholly' and 'obviously' have cogent legal significance." Ibid.

The Court finds in this instance, that it is clear, that the constitutional grounds raised by the plaintiff are wholly insubstantial and frivolous.

The plaintiff's sole constitutional claim is a self-defeating one. He claims that Conn. Gen. Stat. § 49-44 allows the levying of a judgment lien without notice or hearing. Yet the liens of which he complains were levied only after valid judgments had been first obtained in the California state and federal courts, which were thereupon registered in the District of Connecticut. The plaintiff relies heavily on the case law in Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) and Fuentes v. Shevin, 407 U.S. 67 (1972), both of which dealt with the requirement of due process in the pre-judgment context.

The opportunity for a hearing which necessarily precedes a valid judgment certainly satisfies the requirement in Fuentes, that hearings be provided "at a meaningful time." 407 U.S. at 80, quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965). As this Court has previously stated in rejecting the plaintiff's attack on several of the same judgment liens at issue here:

> "Not only does the rationale of Fuentes and Sniadach not apply to the set of facts at hand, but it is difficult to conceive of how the plaintiff could have been afforded a more meaningful opportunity to be heard. The plaintiff, in sum, not only had an adequate opportunity to be heard, but enjoyed a full scale trial in the state court and a subsequent hearing in United States District Court as well."

Tucker v. Neal, supra, at 8.

Although the plaintiff alleges that there is no provision for securing relief from excessive liens, this allegation "merely reflects a misreading or ignoring of the applicable statutes." Tucker v. Teitenberg, Civ. No. H 74-16 (D. Conn. Jan. 10, 1975). Conn. Gen. Stat. § 49-50 [3/] authorizes an action in state court to discharge an allegedly excessive judgment lien. Despite this Court's suggestion, during several of this plaintiff's appearances before it, that such an avenue of relief was open to him, the plaintiff has chosen not to pursue this remedy.

Finally, the plaintiff's "Second Cause of Action" names only the private party defendants and charges them with filing "excessive" judgment liens "maliciously" and with "improper motive." Viewing this claim as "in essence, one of malicious prosecution," Tucker v. Maher, 497 F.2d 1309 (2d Cir. 1974), the Court finds that it, also, fails to state a claim on which relief can be granted, because to state a valid claim:

> ". . . the plaintiff must establish that the civil proceedings were initiated without probable cause and primarily for a purpose other than that of securing the adjudication of the claim on which the proceedings were based."

Id. at 1315; also see, Tucker v. Tattenberg, supra. Under the facts of this case, which disclose the longstanding efforts of the private party defendants to obtain satisfaction of valid judgment debts owed them by the plaintiff Tucker, any claim of lack of probable cause or of ulterior motive is manifestly without merit.

Accordingly, the claims of the plaintiff against all the defendants are dismissed for failure to state a claim upon which relief can be granted. SO ORDERED.

Dated at Hartford, Connecticut, this 17th day of April, 1975.

T. Emmet Clarie
Chief Judge

FOOTNOTES

1/ The complaint alleges a violation of 42 U.S.C. § 1983, and jurisdiction is predicated on 28 U.S.C. § 1343.

2/ § 49-44 provides in pertinent part:

> "Any suitor having an unsatisfied judgment, obtained in any court of this state or of the United States within this state, may cause to be recorded, in the town clerk's office in the town where the land lies, a certificate signed by the judgment creditor, his attorney or personal representative, substantially in the form following:
>
> . . . .
>
> "Such judgment, from the time of filing such certificate, shall constitute a lien upon the real estate described in such certificate . . . ."

3/ § 49-50 provides:

> "Any person interested, as a subsequent encumbrancer or otherwise, in any real estate covered by a judgment lien may bring a complaint, alleging that such lien covers more than sufficient property to reasonably secure such judgment; and the court may, upon such allegation being proved, discharge from such lien any of such real estate which is not needed for the reasonable security of the judgment debt; and the jurisdiction of the court shall be determined by the amount of the judgment debt as stated in the certificate of lien."

31

FILED

UNITED STATES DISTRICT COURT
APR 23 1 05 PM '75

DISTRICT OF CONNECTICUT

U.S. DISTRICT COURT
HARTFORD, CONN

STANLEY v. TUCKER	::::	
	::::	
vs.	::::	CIVIL ACTION NO. H-74-358
	::::	
THOMAS E. MESKILL, ET ALS	::::	

JUDGMENT

The above-identified action came on before the Court for consideration by the Honorable T. Emmet Clarie, Chief United States District Judge;

And the Court having filed its Ruling On Defendants' Motion To Dismiss, granting said Motion and dismissing the Plaintiff's Complaint for failure to state a claim upon which relief can be granted;

It is hereby accordingly ORDERED and ADJUDGED that the Plaintiff's Complaint be and hereby is dismissed.

Dated at Hartford, Connecticut, this 21st day of April, 1975.

SYLVESTER A. MARKOWSKI
Clerk, United States District Court

By: _____
Deputy-in-Charge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER	:	C. A. No H-74-358
-v-	:	NOTICE OF APPEAL
THOMAS E. MESKILL ET AL	:	

The Plaintiff herein hereby appeals to the Honorable Second Circuit Court of Appeals from the judgment entered herein on or about April 23rd, 1975.

THE PLAINTIFF

Stanley V. Tucker

Dated: May 15th, 1975

STANLEY V. TUCKER

Enclosed: Ck 1764 May 15th, 1975 $5.

STANLEY V. TUCKER,

Plaintiff,

-vs-

THOMAS E. MESKILL, etc., et al.,

Defendants.

Civil Action No. H-74-[illegible]

MOTION TO DISMISS

To STANLEY V. TUCKER, plaintiff pro se, and to all other defendants herein and their respective counsel:

PLEASE TAKE NOTICE that on Monday, January [illegible], 1[illegible], at 10:00 a.m., or at such other time and day as the Court may determine, at the United States Courthouse, 450 Main Street, Hartford, Connecticut, defendants PAUL B. CRIKELAIR, MARGIE J. THRELKELD and JEAN NEAL will move the Court for an order dismissing the complaint pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, on grounds of insufficiency of process and lack of jurisdiction over the person.

The moving parties waive oral argument on the motion and submit it on the record.

/s/ Paul B. Crikelair
PAUL B. CRIKELAIR

/s/ Margie J. Threlkeld
MARGIE J. THRELKELD

/s/ Jean Neal
JEAN NEAL

Insufficiency of Process

The defense of insufficiency of process may, at the option of the pleader, be made by motion. Rule 12(b)(4), F R Civ P. Rules of Civil Procedure.

Rule 4(b), F R Civ P, provides in part: "The summons shall * * * contain * * * the names of the parties * * *." See 62 Am Jur 2d, Process § 16. The summons issued herein on November 6, 1974, identifies the defendants in the action as follows: "THOMAS E. MESKILL, INDIVIDUALLY and in his capacity as GOVERNOR OF THE STATE OF CONNECTICUT et al." These moving parties are not named in the summons, and if they were intended to be joined as defendants in the action, as indicated by caption of the complaint, the process purportedly served upon them is plainly insufficient.

Rule 4(b), F R Civ P, further provides: "When, under Rule 4(e), service is made pursuant to a statute or rule of court of the state, the summons * * * shall correspond as nearly as may be to that required by the statute or rule." Here the record indicates that plaintiff sought to serve process upon the Secretary of State of Connecticut, as statutory agent of the moving parties, pursuant to Conn Gen Stats § 52-59b. Plaintiff was thus proceeding under state law, as authorized by Rule 4(e), and summons was accordingly required to be in the form prescribed by the applicable state statute or rule, Conn Gen Stats § 52-90, rather than in the standard federal form. See 2 Moore's Federal Practice, ¶ 4.17[2], p. 1000. The discrepancy is not without substance. Rule 12(a) of the Federal Rules requires the defendant to "serve his answer within 20 days after the service of the summons and complaint upon him, except when service is made under Rule 4(e) and a different time is pro-

* * * in the statute or rule of court of the state." Th[illegible] in the present record, sought to be served under state la[illegible] for an answer within 20 days, and thus fails to inform th[illegible] parties of the time to plead prescribed by the applicable [illegible] of the State of Connecticut or of any automatic statutory continuance accorded by that state's laws to absent defendants. See Conn Gen Stats § 52-46. The process in question is [illegible] insufficient in multiple respects.

Lack of Jurisdiction over the Person

The defense of lack of jurisdiction over the per[illegible] at the option of the pleader, be made by motion. Rule 12 [illegible] Federal Rules of Civil Procedure.

The Court acquires personal jurisdiction of a de[illegible] other than by his voluntary appearance, only by due serv[illegible] him of adequate notice of the action against him and of [illegible] opportunity to defend. Mullane vs Central Hanover Trust [illegible] (1950), 339 US 306, 70 S Ct 652, 94 L ed 865. The insuffi[illegible] of the process assertedly served upon the moving parties, as argued above, leaves this Court without jurisdiction of them personam.

STANLEY V. TUCKER - Plaintiff

-v-

THOMAS E. MESKILL, ET AL

Defendants.

C. A. No H 74 358

PLAINTIFF'S BRIEF IN OPPOSITION TO MOTION TO DISMISS BY DEFENDANTS, CRIKELAIR, THRELKELD, AND NEAL.

I. Factual Background: The California defendants, Crikelair, Threlkeld and Neal are all residents of California and were served with summons and complaint by the U. S. Marshall pursuant to FRCP Rule 4 (e) and under Connecticut's Long Arm Statute, G. S. 52-59(b). These defendants appeared by filing Answer and Interrogatories signed by their California attorney, Robert R. Anderson, who is also a resident of California and a defendant in this action.

II. Service by U. S. Marshall Was Proper Under Rule 4 (e)

The defendants do not dispute, indeed they affirm, that service under Rule 4 e may be made :

> " Whenever a statute or rule of the state in which the district court is held provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to him to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of his property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the statute or rule. "

Under Connecticut state practice civil actions are normally started by a combined summons and complaint (G. S. 52-89) Under the federal rules the summons must separately be issued from the complaint. Rule 4 FRCP. Thus under the federal rules a complaint was issued and served naming each defendant individually by name. Apparently the clerk issued summons naming Thomas E. Meskill, et al as defendants. Both summons and complaint were served together. Defendants do not claim mis-information or confusion or prejudice to any rights. It is obvious that the defendants were properly served within the meaning of the Connecticut statute and

lacking a shewing of prejudice to any rights their motion should be denied in the interests of justice.

III ANSWERS FILED BY ROBERT R. ANDERSON CONSTITUTED APPEARANCE WHICH UNDER RULE 14 COULD ONLY BE WITHDRAWN ON MOTION & NOTICE

The documents prepared and filed in this action by California attorney Robert R. Anderson on behalf of his clients ; Under Connecticut law the Answer drafted on behalf of his California clients and signed by him meets all the requirements of an appearance. The District Court of Connecticut follows the Connecticut State practice as set forth in the Connecticut Practice Book as to withdrawal of appearances.

Local Rule 14 USDC - Conn : "Withdrawal of appearances may be accomplished only by leave of court on motion duly noticed."

Attorney Anderson has violated Rule 14 in his abortive attempt to circumvent his appearance by filing without any "duly noticed motion" to withdraw and without any good cause for such "withdrawal." The motion to dismiss purportedly on behalf of his California Clients should be disregared as a nullity and void.

IV. DEFENDANTS "WAIVED" ANY QUESTIONS AS TO JURISDICTION BY FILING THEIR JOINT ANSWER

"Where defendant appears and answers on the merits he waives the right to assert lack of jurisdiction of his person and may not later raise the defense.... without leave of court"

Bogar v Ujlaki 8 F R Serv 12h Case 2

By STANLEY V. TUCKER

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER, Plaintiff,	Civil Action No. H-74/358
-vs-	ANSWER TO COMPLAINT
THOMAS E. MESKILL, etc., et al., Defendants.	

ROBERT R. ANDERSON, PAUL B. CRIKELAIR, MARGIE J. THRELKELD, and JEAN NEAL ("defendants") jointly answer the complaint herein as follows:

ANSWER TO FIRST CAUSE OF ACTION

First Defense

The process of the court is insufficient, in that none of these answering defendants is named in the summons as a party to the action. Rules 4(b) and 12(b)(4), Rules of Civil Procedure.

Second Defense

The court lacks jurisdiction over these answering defendants, for the reasons stated in their first defense, in that the summons fails to give them due notice of any action against them. Rule 12(b)(2), Rules of Civil Procedure.

Third Defense

The complaint fails to state a claim upon which relief can be granted, in that Section 49-44 of the Connecticut General Statutes does not violate any provision of the United States Constitution, and no other question of law or of fact is presented

for adjudication. Rule 12(b)(6), Rules of Civil Procedure.

Fourth Defense

1. Defendants deny that Section 49-44 of the Connecticut General Statutes, or any other action of the State of Connecticut or of any governmental entity or public authority therein, permits the acts, events, or conditions alleged in subparagraph "a" through "f" of paragraph 5.

2. Defendants deny the allegations of paragraph 6.

3. Defendants deny the allegations of subparagraphs "b" and "c" of paragraph 8.

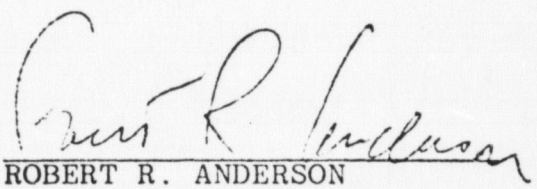
4. Defendants deny the allegations of paragraph 11, following the semicolon therein.

ANSWER TO SECOND CAUSE OF ACTION

Defendants incorporate by reference their four defenses to the First Cause of Action.

Fifth Defense

Defendants deny the allegations of paragraph 3.



ROBERT R. ANDERSON
PAUL B. CRIKELAIR
MARGIE J. THRELKELD
JEAN NEAL

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LAW OFFICES
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SANTA PAULA, CALIFORNIA 93060

TELEPHONES
(805) 525-5564
(805) 647-6377

December 28, 1974

United States District Court
Office of the Clerk
450 Main Street
Hartford, Connecticut 06103

Attention: William D. Templeton
Deputy-in-Charge

Re: Tucker vs Meskill et al.
Civil Action No. H-74-358

Dear Sirs:

I have your letter of December 26, 1974, and regret any inconvenience caused your office by the matters discussed in it. In signing the answer filed November 22, I followed by analogy the California rule that a pleading on behalf of two or more parties jointly may be executed by any one of them. That practice does not seem to comport, however, with Federal Rule 11. Consequently, in my opposing brief to Mr. Tucker's motion to strike the answer, I intend to concede that the answer on file is mine alone, as a defendant pro se. The other "California" defendants will file a responsive pleading of their own, signed by each of them.

Very truly yours,

ANDERSON & ANDERSON

Robert R. Anderson

RRA:b

HARVEY KAGAN, ET AL No 189957 SUPERIOR COURT

VS. COUNTY OF HARTFORD

EDGAR KING DECEMBER 18, 1974

MEMORANDUM OF DECISION
RE PLEA IN ABATEMENT

The plaintiffs have instituted an action against the defendant in which they claim damages as a result of allegedly false and malicious statements made about them. They claim the plaintiff has attacked their business reputation and engaged in a course of conduct intended to "ruin the character, reputation, integrity and business of the plaintiffs."

The defendant has filed a plea in abatement to the complaint asserting that at all times mentioned in the complaint the defendant was a duly elected State Representative and was acting in his capacity as a State Legislator. It is claimed that the court lacks jurisdiction to hear the plaintiff's complaint because of the separation of powers provided in Article Second of the Constitution of Connecticut and the immunity granted legislators by Article Third, Section 15.

The plaintiffs originally demurred to the plea in abatement. Since, as plaintiffs admit, a question of fact exists as to whether the acts alleged were within the area of immunity, the demurrer is overruled. Since the demurrer and the plea in abatement were jointly scheduled for hearing, the plaintiffs filed an answer and a hearing was held on the plea in abatement.

The court finds no merit to the defendant's claim that the doctrine of separation of powers precludes this court from

assuming jurisdiction of this matter. The right of judicial

review has been clear since the historic decision of Marbury v. Madison, 5 U. S. (1 Cranch) 137. Legislative immunity does not override the doctrine of judicial review. "The purpose of the protection afforded legislators is not to forestall judicial review of legislative action but to insure that legislators are not distracted from or hindered in the performance of their legislative tasks by being called into court to defend their actions." Powell v. McCormack, 395 U. S. 486, 503. The power of the judiciary to determine the validity of legislative actions which affect individual rights is beyond question. Gravel v. United States, 408 U. S. 606, 620; Kilbourn v. Thompson, 103 U. S. 168, 199. The defendant argues that distinctions between our state constitution and the federal constitution make these general principles inapplicable. There is no sound basis for this argument. In Connecticut, the doctrine of judicial review of legislative actions and interpretation of the constitution relative thereto, was recognized as early as Trustees of the Bishop's Fund v. Rider, 13 Conn. 87, 92. The doctrine was recently approved in Szarwak v. Warden, 36 Conn. Law Journal, 1.

The defendant's claim of immunity arises from Article Third, Sec. 15 of the Connecticut Constitution which provides that "for any speech or debate in either house, they shall not be questioned in any other place." This wording is identical to that contained in Article I, Sec. 6 of the Constitution of the United States, regarding the immunity granted to United

States Senators and Representatives. Although it is clear that an absolute privilege exists for words spoken on the floor of either house in the discussion of legislative problems, it does not appear that the courts of this state have had the occasion to determine how far beyond this the immunity applies. However, the United States Supreme Court has had occasion to interpret the immunity clause of the Constitution of the United States. Since the Connecticut immunity clause is identical, this court feels it should be interpreted in a similar manner.

It was stipulated by the parties that the defendant spoke to the media and others about the plaintiffs. These comments were made by the defendant when he was not participating in a legislative session on the floor of the house or engaged in a legislative committee session.

In December, 1973, alleged abuses in the ambulance business were called to the defendant's attention by a constituent who was engaged in such business. The defendant was, at the time, a member of the House of Representatives, having served since 1967. The principle complaints concerned alleged improper conduct on the part of the plaintiff, Harvey Kagan, and his ambulance service, the plaintiff Professional Ambulance Service, Inc.

Having gathered further information on the subject, the defendant filed a complaint with the State Ambulance Commissio Not satisfied with the results obtained, he then reported the

alleged improprieties to various state officials and instituted a mandamus action. The defendant remained dissatisfied with the results of these activities. He then discussed the problem of alleged improprieties in the ambulance service business with members of the press and in February, 1974, appeared on a television program entitled, "Scandal Rides the Ambulances", in which a number of abuses and problems were alleged to be occurring in ambulance operations, including those involving the plaintiffs.

At the time of the aforesaid activities, no legislation was pending involving ambulance operations. Largely as a result of the defendant's activities, especially the television program above referred to, a subcommittee on Ambulance Investigation and Emergency Medical Service was created in the 1974 session of the legislature. The defendant served on this subcommittee. Remedial legislation and recommended future legislation resulted from the subcommittee's activities.

In interpreting the immunity clause, the United States Supreme Court has held that the protection afforded legislators covers only those things "generally done in a session of the House by one of its members in relation to the business before it." Kilbourn v. Thompson, 103 U. S. 168, 204; United States v. Brewster, 408, U. S. 501, 512. The privilege would extend to committee hearings as well as proceedings on the floor of either house. Gravel v. United States, supra, 625. However, the privilege does not extend beyond the legislative sphere and

does not include anything which a legislator may regularly do, since legislative acts are not all encompassing. Doe v. McMillan, 412 U. S. 306.

The defendant relies heavily upon the language of the court in Coffin v. Coffin, 4 Mass. 1, which was cited with approval in Tenney v. Brandhove, 341 U. S. 367, 373-374. In Coffin, the court stated that the immunity privilege extends to "everything said or done by him, as a representative, in the exercise of the functions of that office", and that in some cases, legislators' were entitled to the privilege "when not within the walls of the representatives' chamber." However, as pointed out in United States v. Brewster, supra, at 515, a close reading of Coffin indicates that the court was referring only to legislative acts, such as committee meetings, which take place outside the physical confines of the legislative chamber. The United States Supreme Court has never held that the immunity clause protects all conduct relating to the legislative process. United States v. Brewster, supra, at 515.

The complained of conduct in this case includes a period before any legislation regarding ambulance service was pending and prior to the formation of the subcommittee above referred to. It also includes comments made outside of the legislature or any subcommittee meeting. Under such circumstances, the court holds that the immunity clause does not preclude the suit in question. The plea in abatement is overruled.

J. Shea, Judge

STATE OF CONNECTICUT,)
Hartford County,) -K 5-

NO. 18 52 83

BARNABY HORTON ET AL. SUPERIOR COURT

V.

THOMAS J. MESKILL ET AL.

NO. 18 64 36 COUNTY OF HARTFORD

PETER D. GRACE ET AL.

V.

THOMAS J. MESKILL ET AL. DECEMBER 26, 1974

MEMORANDUM OF DECISION

I

In these actions, the plaintiffs seek a declaratory judgment determining whether the system of financing public schools in this state, insofar as it applies to pupils in public schools in Canton, violates the United States Constitution or the Connecticut Constitution, or both. Although the plaintiffs also claim equitable relief, that relief is clearly only ancillary to the plaintiffs' principal claim. See Wenzel v. Danbury, 152 Conn. 675, 678. That principal claim is that the funds necessary to operate elementary and secondary schools in Connecticut are raised principally by local property taxes; that the local property taxes thus raised vary on a broad scale from town-to-town; that that variation results in broad variations from town-to-town in the amount of money available for operating the local public schools; that these variations in turn produce broad variations from town-to-town in both the breadth and quality of instruction available to pupils; and that, therefore, the present system for financing public school education discriminates against the pupils in Canton because the breadth and quality of public school education they receive is

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C/S → all Counsel

inferior to that which pupils receive in comparable towns with a larger base of taxable property.

The claims made by the plaintiffs in these cases are similar to the claims that have been made and ruled upon, or are now pending, in cases in thirty-six other states. See 2 Governor's Commission on Tax Reform, Local Government, Schools and Property, December, 1972 [hereinafter cited as Governor's Tax Reform Commission Report] p. 47 (Exhibit DD). Because education-financing systems vary from state-to-state, and because the provisions of state constitutions vary from state-to-state, decisions in other states raising the issue under a state constitution are of little value as precedents. The leading case raising the issue under the federal constitution, San Antonio School District v. Rodriguez, 411 U.S. 1, 36 L.Ed. 2d 16, decided that the Texas system of financing public education did not violate the "equal protection" clause of the United States Constitution. The reasons cited by the majority opinion for that holding are, briefly stated (1) that the "strict-judicial-scrutiny" test did not apply because (a) there was no showing that a definable category of "poor" persons was discriminated against and (b) the Texas system did not impinge upon a right that was afforded explicit or implicit protection under the United States Constitution, since education was not such a right; and (2) that the "rational-relationship-to-legitimate-state-purposes" test was satisfied because the Texas system assured a basic education for every child, while allowing local control of local schools through local taxation.

Although there are significant differences between the Texas system and the Connecticut system, those differences do not, in the opinion of this court, make inapplicable to the Connecticut system the reasons why the Texas

system was held not to violate the United States Constitution. Rodriguez is, therefore, controlling authority that the Connecticut system does not violate the "equal protection" clause of the United States Constitution. Furthermore, Rodriguez is also persuasive authority as to the proper construction of the "equal protection" clause (article first, § 20) of the Connecticut Constitution. On the other hand, since Rodriguez concerned only the "equal protection" clause of the United States Constitution, that decision is not authority in construing clauses of the Connecticut Constitution other than its "equal protection" clause.

II

In Connecticut, the duty of educating children is a duty of the state. Even before the Constitution of 1965, our Supreme Court had held that "under our law the furnishing of education for the general public is a state function and duty . . ." State ex rel. Board of Education v. D'Aulisa, 133 Conn. 414, 418. "It is a duty not imposed by constitutional provision but has always been assumed by the State; not only because the education of youth is a matter of great public utility, but also and chiefly because it is one of great public necessity for the protection and welfare of the State itself." Bissell v. Davison, 65 Conn. 183, 191.

"It has long been held in Connecticut that town and city boards of education are subject to local control only as to budgetary matters . . . In all other respects, the local boards 'serve as agents of the state in their communities.' " Murphy v. Berlin Board of Education, 36 Conn. L.J. No. 24 (December 10, 1974) p. 1, 3.

In 1965, this "state function and duty" to furnish public education was formally recognized and incorporated into the Connecticut Constitution in article eighth, § 1, which reads as follows: "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation."

This constitutional provision has two important consequences for purposes of the present litigation. First, the state is now under a constitutional duty to furnish free public elementary and secondary education. See Murphy v. Berlin Board of Education, supra. Second, the General Assembly is under a constitutional duty to

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enact legislation that will be "appropriate" to carry out the state's constitutional duty to provide free public elementary and secondary schools. Hence, although the duty of educating children has been delegated by statute to municipalities, both the common law of this state and the Connecticut Constitution provide that the duty of educating Connecticut children is upon the state, as a whole, and not upon its municipalities.

The mechanics by which the duty of operating and maintaining public schools has been delegated to the municipalities is to be found in statutes that antedate the Constitution of 1965. The essential statutes are now Gen. Stat. § 10-240, which provides that each town is a school district and that each town shall "maintain the control" of all public schools within its limits; Gen. Stat. § 10-241, which provides that each school district shall have the power to lay taxes, to build school houses and to establish and maintain schools of different grades; and Gen. Stat. § 10-220, which provides that the boards of education shall maintain in their several towns good public elementary and secondary schools.

These statutes and their predecessors have long been part of the history of public schools in this state. "From the earliest period in the history of Connecticut the duty of providing for the education of children was regarded as a duty resting upon the state -- a governmental duty. Both before and since the adoption of the constitution [of 1818] that duty was, and has been, performed through the instrumentality of towns, societies and districts, as the legislature from time to time saw fit. In so far as these subdivisions of the territory of the state were used for the performance of this duty, they were the mere agents and instruments of the state, liable to be changed at its pleasure, and used by it from time to time solely because the object

in view could in its opinion be more effectually and economically accomplished through such agencies than in any other way." State ex rel. Walsh v. Hine, 59 Conn. 50, 60.

These duty-delegating statutes just cited are, of course, but a small section of the statutory scheme concerning the financing and operating of elementary and secondary schools. Those statutes have been singled out because they set forth the basic provisions authorizing the levy of local property taxes to operate schools and authorizing boards of education to exercise authority over the operation of the schools. Nevertheless, as noted previously, the duty to educate is that of the state; delegating the duty does not discharge it.

III

Under present statutory programs, the funds raised by local property taxes by each town are supplemented by both state and federal grants. The principal state grant is the so-called "Average Daily Membership Grant" (Gen. Stat. § 10-262; P.A. 74-158), which is $250 per pupil of average daily membership. Other programs provide, for example, for grants for exceptional and handicapped students (Gen. Stat. § 10-76a to 10-76g); school libraries (Gen. Stat. § 10-267); school construction (Gen. Stat. § 10-286); and student transportation (Gen. Stat. § 10-266j and §§ 10-273a and 10-277). In addition, funds are available from the federal government in the form of special grants.

Despite the variety and number of state-aid-to-education grants, the local property tax is the principal source of funds for operating the public elementary and secondary schools. A state commission studying school finances issued a report in February, 1974, containing the following estimate

of the sources of school revenues in this state during the 1973-1974 school year: local taxes, 73.8%; state aid, 23.1%; federal aid, 3.1% Interim Report of the Commission to Study School Finance and Equal Educational Opportunity; SA 73-143 (hereinafter cited as School Finance Report) p. 10 (Exhibit AA). Because local property taxes are the principal source of revenue for schools, one significant way to measure the relative amount of money available for schools is to obtain the grand-list-per-pupil figure by dividing the grand list of the town by the number of pupils. The evidence in this case is that the range in the grand-list-per-pupil figure in this state varies from approximately $20,000 (Chaplin) to over $170,000 (Greenwich). Canton is at the lower end of the scale with approximately $38,000. The state average is $53,312. See Exhibit N.

In the light of these figures, it is not surprising that the School Finance Report should speak of "the manifest disparities in tax resources of Connecticut's school districts" (p. 4) or that the Governor's Tax Reform Commission Report should say (p. 53-54), "In short, many towns can tax far less and spend much more; and these less fortunate towns can never catch up in school expenditure because taxes are already as high as homeowners can tolerate . . . . This dual inequity -- a family can pay more and get less for its children -- is the fundamental issue of school finance." These generalizations find full support in a statistical analysis made of the Connecticut school finance system reported in a note in 81 Yale L.J. 1303 entitled, "A Statistical Analysis of the School Finance Decisions: On Winning Battles and Losing Wars." In that note, which was described in Rodriguez as "[an] exhaustive study of school districts in Connecticut" (411 U.S. 23), the authors found "all measures of district wealth correlate quite highly with expenditures per pupil." 81 Yale L.J. 1303, 1328.

There can be no doubt, then, that in Connecticut the amount of money that is spent for the public school education of a child is determined to a large degree by the tax base in the municipality he lives in, and that there are great disparities among the 169 towns in the amount of tax base per pupil. A low tax base in a given municipality does not, of course, mean that that municipality has a low per capita wealth. The plaintiffs, in other words, are not complaining that, under the present system, the children of poor parents live in towns with a low tax base and that, therefore, the present system discriminates against the poor. The plaintiffs in these and similar cases are complaining about "the sheer irrationality of a system that allocates education on the basis of property values . . . . [Their] argument would be similar and no less tenable should the state make educational expenditures dependent upon some other irrelevant factor, such as the number of telephone poles in the district." Note, 81 Yale L.J., supra, 1307.

In other words, the complaint about the present system is that the amount of money presently available for educating public school pupils in Connecticut is determined significantly by the town's grand list, which is totally unrelated to either the needs or wants of those pupils. A school district with a low per-pupil grand list has to narrow the breadth of its curriculum and its extracurricular programs. Additionally, it may not have the personnel necessary to cultivate "grantsmanship" (see Note, 31 Yale L.J. 1303, 1322 n. 94); or to perceive, and provide special instruction for, both handicapped and gifted children; or to furnish counseling to children in need of it; or to have a well-rounded vocational training program. Also, it may not be able to have a salary range adequate to attract the more-competent and better-trained personnel. To the extent that lack of local property tax money imposes some or all of these deficiencies upon the pupils in one town

to a substantially greater degree than upon the pupils in another town, the pupils in the former are being denied these educational advantages, not because they do not need them or want them but because the present method of raising funds to provide for their education is not related to either their educational needs or their wants.

As previously noted, that present method is the result of legislation in which the state delegates to municipalities of disparate financial capability the state's duty of raising funds for operating public schools within that municipality. That legislation gives no consideration to the financial capability of the municipality to raise funds sufficient to discharge another duty delegated to the municipality by the state, that of educating the children within that municipality. The evidence in this case is that, as a result of this duty-delegating to Canton without regard to Canton's financial capabilities, pupils in Canton receive an education that is in a substantial degree lower in both breadth and quality than that received by pupils in municipalities with a greater financial capability, even though there is no difference between the constitutional duty of the state to the children in Canton and the constitutional duty of the state to the children in other towns.

Under the present statutory system, the legislation ignores the disparities in the tax base of the municipalities and thereby insures disparities in public school education. The constitutional duty to educate the children of the state is a constitutional duty of the state; it is not the constitutional duty of the municipalities. If the state delegates that duty to the municipalities, the legislation that delegates that duty must, under article eighth, § 1, be "appropriate." The disparities in educational

opportunity that are inherent in the present duty-delegating legislation make that legislation not "appropriate" legislation for discharging the state's constitutional duty and that legislation therefore violates article eighth, § 1, of the Connecticut Constitution.

The court is not unmindful of the testimony that there is no conclusive evidence that there is a correlation between education input (expenditures per pupil) and education output ("better educated" pupils). On the other hand, the evidence in this case is highly persuasive that, all other variables being constant, there is a high correlation between education input and education opportunity (the range and quality of educational services offered to pupils). In other words, disparities in expenditure per pupil tend to result in disparities in education opportunity.

Nor is the court unmindful of the testimony concerning the theory that there is a lessening marginal utility for each successive increment of education input. That theory does not mean, however, that the utility from any given increment, in terms of an increase in education opportunity, will not be commensurate with the expenditure necessary for that increment. There was direct evidence that an increase in per pupil expenditures in Canton would raise the level of education opportunity there in significant and highly desirable respects.

IV

There is an additional reason why the present statutory scheme does not comply with the Connecticut Constitution. Under article first, § 20, of that constitution, "No person shall be denied the equal protection of the law." This provision and the "equal protection" clause of the federal constitution "have the same meaning and impose similar constitutional limitations." Karp v. Zoning Board, 156 Conn. 287, 295. Since Rodriguez

interpreted the federal "equal protection" clause with respect to the same issue as that involved in this case, Rodriguez, as previously noted in this memorandum, is persuasive authority concerning the meaning of article first, § 20.

In its opinion in Rodriguez, the Supreme Court of the United States said, "We must decide, first, whether the Texas system of financing public education operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny. If so, the judgment of the District Court [holding that the Texas system violated the "equal protection" clause of the United States Constitution] should be affirmed." 411 U.S. 17.

Under article eighth, § 1, of the Connecticut Constitution, there shall "always" be free public elementary and secondary schools in the state. The article also commands the general assembly to "implement this principle by appropriate legislation." The opinion in Rodriguez makes it clear that if there has been a provision in the United States Constitution saying that education is a fundamental right, the Supreme Court of the United States would have found that the Texas system violated the "equal protection" clause. Although article eighth, § 1, of the Connecticut Constitution does not declare in haec verba that education is a fundamental right, the mandatory language that the general assembly shall "implement" the principle "by appropriate legislation" makes it the duty of the general assembly to provide for free public education and creates a co-relative right to that education. The repeated statements in our cases concerning the importance to the state of educating its children (see e.g. State ex rel. Walsh v. Hinc, supra) make

inevitable the conclusion that the right thus created by article eighth, § 1, is a fundamental right.

Under the "equal protection" clause, an interference with the "fundamental right" to education requires "strict judicial scrutiny . . . [which] means that the State's system is not entitled to the usual presumption of validity, that the State rather than the complainants must carry 'a heavy burden of jusification,' that the State must demonstrate that its educational system has been structured with 'precision,' and is 'tailored' narrowly to serve legitimate objectives and that it has selected the 'less drastic means' for effectuating its objectives . . ." 411 U.S. 16, 17. The Supreme Court of the United States found that the Texas system "and its counterpart in virtually every State will not pass [the] muster" of "strict judicial scrutiny." Ibid.

It has been argued that the Connecticut system may be justified on the ground that it serves the "legitimate objective" of local control. There is, however, no reason why local control needs to be diminished in any degree merely because some system other than the present system is adopted. Indeed, there was convincing evidence that other systems have been adopted without any loss of local control. Since that same objective may be achieved without the discrimination of the present system, that objective may be achieved by "less drastic means" and is therefore no justification for interfering with the fundamental right to education.

The court holds that, under the reasoning and authority of Rodriguez, the Connecticut system violates article first, § 20, of the Connecticut Constitution.

V

The record discloses that there still remains for decision an issue raised in a challenge to the jurisdiction of the court. That challenge arose originally out of a motion to erase filed by state officials who are defendants in this case. The motion to erase raised issues of justiciability, sovereign immunity and standing. In a memorandum of decision, dated January 21, 1974, the court (Parskey, J.) ruled against those defendants on the issue of justiciability, on the ground that "the defendants make no claim contesting the adverse relationship of the opposing parties; nor could they on the face of the record;" and also on the issue of standing, on the ground that under Gen. Stat. § 10-15, which requires that public schools be open to all children over five years of age, a plaintiff presently eligible for public schooling has standing to claim that the distribution of funds for public schools does not meet constitutional standards.

The issue of sovereign immunity was, however, not decided by Judge Parskey, on the ground that, first, the question should have been raised by a demurrer and not by a motion to erase and, second, that, assuming sovereign immunity is no defense where a complaint charges officials with violation of a plaintiff's constitutional rights, (Weaver v. Ives, 152 Conn. 586, 590), such a claim "concerns the viability of the plaintiff's cause of action and therefore must await consideration at an appropriate time." Accordingly, on the current state of the record, the claim of sovereign immunity has been raised but has not been decided. Since that claim, if valid, would prevent the entry of a judgment binding on the state officials who are the primary defendants in the plaintiffs' suit,

the court must make a definitive disposition of the issue raised by that claim.

As noted previously, the primary objective of the present actions is to obtain a declaratory judgment; the request for equitable relief is merely ancillary to that primary objective. That these actions are primarily actions for a declaratory judgment is significant to the question of sovereign immunity in two respects:

First, "it has been held elsewhere that the doctrine [of sovereign immunity] was not meant to apply to actions which seek, as the plaintiff seeks here, nothing more than a declaration of legal rights . . . Such a conclusion is consistent with the law of this state." Textron, Inc. v. A. Earl Wood, Commissioner of Transportation, 36 Conn. L.J. No. 23 (December 3, 1974) 1, 4;

Second, where an action for a declaratory judgment concerns a matter "of considerable public importance" (Larke v. Morrissey, 155 Conn. 163, 169), as it does in this case, "the statute and rules [concerning declaratory judgments] should be accorded a liberal construction to carry out the [highly remedial] purposes underlying [declaratory] judgments." Sigal v. Wise, 114 Conn. 297, 301. Under this principle, even if the doctrine of sovereign immunity might be a valid defense to declaratory judgment actions against state officials, the defense should not be available where it is of "considerable public importance" that there should be a judicial determination of the question that is the subject of the action for the declaratory judgment. If the rule were otherwise, the sovereign immunity defense could be used to foreclose judicial determinations even though such a determination was manifestly in the public interest.

Accordingly, the court rules that the defense of sovereign immunity filed on behalf of state officials is overruled.

VI

In Rodriguez, the Supreme Court of the United States said, "The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative thinking as to public education, its methods, and its funding is necessary to assure both a higher level of quality and greater uniformity of opportunity. These matters merit the continued attention of scholars who already have contributed much by their challenges. But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them." 411 U.S. 58.

The court at this time retains jurisdiction of the action and will render no judgment other than a declaratory judgment that Gen. Stat. §§ 10-240 and 10-241 insofar as they purport to delegate to Canton the duty of raising taxes to operate free public elementary and secondary schools and insofar as they purport to delegate to Canton the duty of operating and maintaining free public elementary and secondary schools violate article first, § 20, and article eighth, § 1, of the Connecticut Constitution. Counsel for the plaintiffs is to prepare a judgment file and submit it to counsel for the defendants for their approval as to form. If counsel are unable to agree upon the form of the judgment file, counsel for the plaintiffs is to notify the court and a hearing will be held on that matter.

The court thanks counsel for the exceptionally thorough and competent preparation and presentation of the evidence in the case and their outstanding briefs.

 JAY E. RUBINOW J.

CERTIFICATE OF SERVICE BY MAIL

I, STANLEY V. TUCKER, hereby certify that on the 4th day of September 1975 I served the within document, Appellant's Appendix on the Appellees herein by mailing 1 true copies thereof postage prepaid by depositing in the U. S. mails at Hartford (air mail to California) addressed as follows:

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